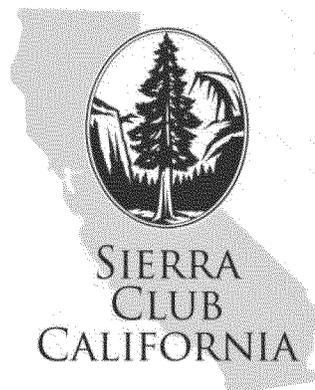
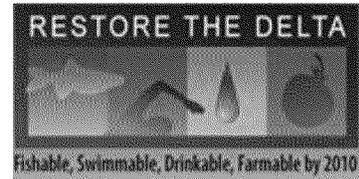
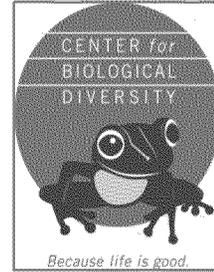
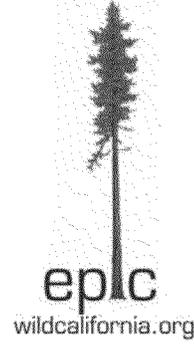
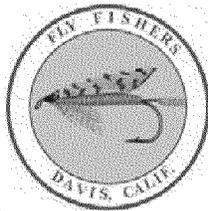


*ENVIRONMENTAL WATER CAUCUS COMMENTS
ON THE PARTIALLY RECIRCULATED DRAFT ENVIRONMENTAL IMPACT REPORT/
DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT FOR THE
BAY DELTA CONSERVATION PLAN / "CALIFORNIA WATERFIX"
OCTOBER 30, 2015*





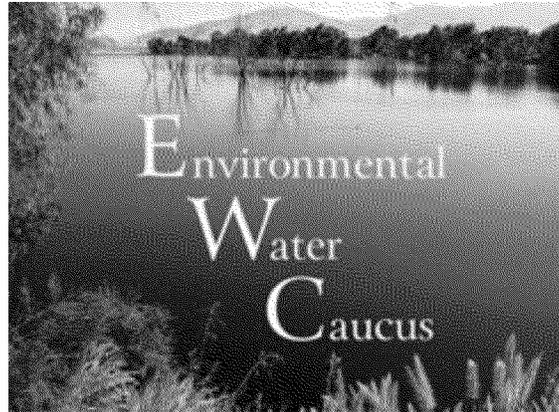
NORTH
COAST
RIVERS
ALLIANCE



Santa Clarita Organization
for Planning and the
Environment (SCOPE)

CA Save Our
Streams Council





October 30, 2015

The Honorable Sally Jewell
Secretary of the Interior
U.S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240
exsec@ios.doi.gov

John Laird, Secretary
California Natural Resources Agency
1416 Ninth Street, Suite 131
Sacramento, CA 95814
Kimberly.goncalves@resources.ca.gov

The Honorable Penny Pritzker
Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, D.C. 20230
thesec@doc.gov

Mark W. Cowin, Director
California Department of Water
P.O. Box 942836, Room 1115
Sacramento, CA 94236-0001
Mark.cowin@water.ca.gov

The Honorable Gina McCarthy, David Murillo, Regional Director
U.S. Environmental Protection Agency
WJC North, Room 3,000
Washington, D.C. 20460
McCarthy.Gina@epa.gov

U.S. Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825
dmurillo@usbr.gov

BDCP Comments
PO Box 919
Sacramento, CA 95812

BDCPComments@icfi.com

Subject: Comments on Bay Delta Conservation Plan/"California Water Fix" Project Recirculated Draft Environmental Impact Report/Supplemental Environmental Impact Statement (RDEIR/SDEIS)

Dear Secretaries Jewell, Pritzker and Laird; Administrator McCarthy; Regional Director Cowin, and other addressees below:

We thank you for the opportunity to comment on the above-referenced Environmental Water Caucus call the Tunnels Project. The mission of the Caucus is to achieve comprehensive, sustainable water management solutions and its members employ political, legal and economic strategies to improve water quality and protect public trust values throughout the Sacramento-San Joaquin Delta Estuary and the Central Valley/Sierra Nevada

Caucus and coalesces over thirty diverse environmental water, fishing and Indian tribes) around these issues.

EWC continues to object to the Tunnels Project: it should be operated. The Tunnels Project will accelerate deterioration of the Bay freshwater flow badly needed for the health of both the Delta cities, counties, and local water agencies of badly needed tax base water self-reliance projects including investments in water use efficient technologies, local and regional water supply projects, and imp local and regional supply efforts and decades of detrimental aquatic unwisely encourage continued mismanagement of California's state and federal have already failed to steward its water resources through four years violates the California Environmental Quality Act and the National End failing to disclose impacts and evaluate a reasonable range of alternative information" on behalf of project advocacy, rather than provide a Project effects.

Myth #1: California Water Fix tries to sell itself as a sustainable water supply reliability of the state and federal water export systems.

Fact: The Tunnels Project will achieve this by taking more water water users and ecosystems, replacing this fresher water with more the San Joaquin River. Sustainability for whom? (See our Sections)

Myth #2: California Water Fix will improve flows through the Delta east-to-west flow direction rather than the current north-to-south influence of the south Delta export pumps.

Fact: The Tunnels will reduce Sacramento River flows by 20 to drought-like conditions throughout the Bay-Delta Estuary. Delta waters pollutants and toxins from harmful algal blooms. (See our Section)

Myth #3: California Water Fix will mitigate the seismic and sea level

Fact: The Tunnels project does nothing to protect the Delta; it water exports from seismic and sea level rise risks to unsustainable Valley and suburban development in southern California.

Myth #4: The California Water Fix will be affordable to Californians it.

Fact: Financing and financing plans for the Tunnels Project are stalled. of Tunnels water, while urban ratepayers balk at the prospect of property tax bills climbing to cover agriculture's water costs, and proof water supply investments would be foregone, having been spoiled just because there may be a beneficiary to pay for the project. Section III comments, attached.)

Regarding this last fact we note that Mark Cowin, director of Resources, stated at a recent event:

"...really comes down to how we are going to pay for it. What the projects and the strategies that we know we need? We've seen California water projects and that has left us in a lurch. Should

Hope Congress is going to provide money through the Corps of Engineers Reclamation? Or other agencies? Or are we ready to take the bull by the funding sources? Obviously every project comes down to a different equation that riddle. I think is probably one of the biggest linchpins in our movement.

The enclosed comment document goes into detail about these and Project.

Should you have questions about our comments, do not hesitate to contact (connere@gmail.com; 310/804-6615), or Tim Stroshane (spr1101524@6313.com)

Conner Everts
Facilitator
Environmental Water Caucus
Southern California Watershed Alliance

Tim Stroshane
Consultant
Environmental Water Caucus
Policy Analyst, Restore the Delta

Dr. C. Mark Rockwell
PaciFic Coast Representative
Endangered Species Coalition

Jeff Miller
Conservation Advocate
Center for Biological Diversity

Chief Caleen Sisk
Spiritual Leader
Winnemen Wintu Tribe

Jonas Minton
Senior Water Policy Advisor
Planning and Conservation League

Bill Jennings
Executive Director
California Sport Fishing Protection Alliance

Kathryn Phillips
Director
Sierra Club California

Jim Cox
President
California Striped Bass Association

Robyn DiFalco
Executive Director
Butte Environmental Council

Siobahn Dolan
Director
Desalination Response Group

Lloyd Carter
President
California Save Our Streams Council

Amber Shelton
Conservation Advocate
Environmental Protection Information Center

Carolee Krieger
Executive Director
California Water Impact Network

Eric Wesselman
Executive Director
Friends of the River

Colin Bailey
Executive Director
Environmental Justice Coalition for Water

Roger Mammon
President
Lower Sherman Island Duck Club

Barbara Barrigan-Parrilla
Executive Director
Restore the Delta

Lowell Ashbaugh
Vice President, Conservation
Northern California Council Federation of Fishers

Frank Egger
President

Cecily Smith
Executive Director
Foothill Conservancy

Adam Scow
California Campaign Director
Food and Water Watch

Lynne Plambeck
Executive Director
Santa Claritas for Planning and Suburban Inland River Preservation Trust

Diana Jacobs
Chair, Board of Directors

Stephen Green
President
Save the American River Association

Larry Collins
President
San Francisco Crab Boat Owners Association

Craig Tucker
Karuk Tribe

Dick Pool
President
Water4Fish

Dan Bacher
Editor
Fish Sniffer

Barbara Vlamis
Executive Director
AquAlliance

Linda Sheehan
Executive Director
Earth Law Center

Marty Dunlap
Citizens Water Watch

Konrad Fisher
Executive Director
Klamath Riverkeeper

Miriam Gordon
California Director
Clean Water Action

Attachments: [EWC](#) [Comments](#) [Bay](#) [Delta](#) [Conservation](#) [Plan/California](#)

cc: [\(next page\)](#)

Additional Addressees, all via email:

Tom Howard, Executive Director Diane Riddle, Environmental Program
State Water Resources Control State Water Resources Control

Maria Rea, Assistant Regional Michael Tucker, Fishery Biologist
National Marine Fisheries Service National Marine Fisheries Service

Larry Rabin, Acting Field Supervisor Lori Rinek
Delta U.S. Fish and Wildlife Service
U.S. Fish and Wildlife Service

Mary Lee Knecht, Program Manager Patty Idloff
U.S. Bureau of Reclamation U.S. Bureau of Reclamation

Deanna Harwood Kaylee Allen
NOAA Office of General Counsel Department of Interior Solicitor's

Jared Blumenfeld, Regional Administrator Tom Hagler
U.S. EPA, Region IX U.S. EPA General Counsel Office

Tim Vendlinski, Bay Delta Program Stephanie Skophammer, Program
Water Division U.S. EPA, Region IX
U.S. EPA, Region IX

Erin Foresman, Bay Delta Coordinator Lisa Clay, Assistant District
U.S. EPA, Region IX U.S. Army Corps of Engineers

Michael Nepstad, Deputy Chief Zachary M. Simmons, Senior
Division Manager
U.S. Army Corps of Engineers U.S. Army Corps of Engineers

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Contents¹

Executive Summary	3
Did the 18 months make a difference that matters in the Tunnels Project's proponents just want the water.	5
Introduction	7
The EWC objects to the Tunnels Project.	7
Apply the precautionary principle to water policy. Free Speech, Transparency, and Tunnels Project Commentary	10
The Public Trust, the Delta Common Pool, and the ESA	11
Restoring the Delta for All	12
The Tunnels Project must be excluded from the Delta Plan. Reasonable Use of Water	16
Major Environmental Issues	17
Introduction	17
Project Objectives, Purposes and Needs	19
A reasonable range of alternatives is still not considered.	23
The Tunnels Project is not permissible under the Endangered Species Act	40
Clean Water Act Violations	51
Water Quality, Real-Time Operations, and Adaptive Management	63
Continuing Failure to Provide Adequate Funding Assurances	96
Worsening Failure to Provide Governance and Implementation Support	100
This Year's Tunnels Project is Also Contrary to	101
The RDEIR/SDEIS omits key federal legislation from its regulatory analysis. The RDEIR/SDEIS does not meet Environmental Justice legal standards.	101
The Tunnels Project is contrary to the Delta Reform Act.	102
The RDEIR/SDEIS fails to comply with Water Code Section 17020.	102
The Tunnels Project will violate the federal Clean Water Act.	103
The Tunnels Project is contrary to Article IX, Section 2 of the California Constitution.	105
The Tunnels Project violates the Public Trust Doctrine.	105

¹ Comment preparation and consultation managed by Tim Strohshane for the Contributors include Colin Bailey and Esther Min (Environmental Justice Coalition Barrigan-Parrilla) (Restore the Delta), Chelsea Tu (Center for Biological Diversity Jackson) (California Water Impact Network), Linda Sheehan and Grant Wilson (Friends of the River), Patricia Schifferle (Pacific Advocates), and Bill Jenni (Protection Alliance).

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Specific Comments on the RDEIR/SDEIS 16

Objective, Purpose and Need Issues 116

Cumulative impacts are not adequately analyzed in the RDEIR/SD

Supplemental Modeling for SWRCB (Increased Delta outflows)

Failure to Mitigate Adverse Impacts of North Delta Intakes in
Management and Fish Screens 126

Absence of Baseline Information to Measure Predation Significance
Intakes 134

The RDEIR/SDEIS is incomplete for lack of other critical base

Clifton Court Pump Failure, Water Hammer and Back-cflow Effect

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Executive Summary

Did 18 months make a difference that matters in the Tunnels Project?

No, we not really.

The Environmental Water Caucus (EWC) objects to approval of the (BDCP)/California Water Fix project including the Tunnels Project to approval of Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) Project. The definite lead agencies for the project continue to be the California Department of Water Resources (DWR), although there are other Tunnels Applicants.

² BDCP, the Bay Delta Conservation Plan, here describes all 22 measures plan. That plan consisted of what we referred to in the last year's con and measures 2 through 22, consisting of the Yolo Bypass Fish Facility restoration measures 3 through 11, measures addressing several ecosystem "str invasive aquatic vegetation, dissolved oxygen, predation hotspots) in measures 12 in measure 18, and human behavior management measures (including urban boating imports of invasive species, non-project in-Delta diversions, and avoidance measures for construction activity) 19 through 22.

³ "California Water Fix" is a misnomer; it will not be six California water appears to be, a Tunnels Project. We think it best not to dignify "branding" effort since it rhetorically applies ideological lipstick to a metaphor.

⁴ Last year, according to the Bay Delta Conservation Plan, the "authorized entities" for the Bay Delta Conservation Plan included:

- California Department of Water Resources, which would own the Tunnel Conservation Measure 1
- US Bureau of Reclamation (whose authorization for take is sought)
- Kern County Water Agency
- Metropolitan Water Agency of Southern California
- San Luis & Delta Mendota Water Authority
- Santa Clara Valley Water District
- State and Federal Contractors Water Agency
- Westlands Water District
- Alameda County Flood Control and Water Conservation District (Zone 7)

This year, EWC will continue to refer to the "Authorized Entities" as Applicants, "Tunnels Applicants," or "Tunnels Project Applicants" with coincidence we know any longer which entities constitute the Tunnels Applicants. None identified in the 2015 RDEIR/SDEIS. Assuming the absence of the others' significant it suggests, first, that they did not wish to be associated and second, that they may be conflicted about continuing overt support the Tunnels Project. Not identifying all applicants associated with the project Guidelines § 15051. The existing BDCP financing plan of Chapter 8, No "authorized entities" would be paying for most Tunnels capital facilities in their being lead agencies, yet their names are not disclosed in sections review processes.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

We provide our comments on the Recirculated Draft EIR/Supplemental both observations, legal and policy analysis, and criticisms in Section and conclude with specific comments on the RDEIR/SDEIS in Section document roughly parallels that of our June 11, 2014, comments review for the Bay Delta Conservation Plan and its Tunnels Project.

Last year, the Bay Delta Conservation Plan was certainly a challenging strategic plan for habitat restoration and a quasi-project description Project export facility. The Tunnels project was considered as a hyped reduction of harm to listed species at the federal and “conservation strategy” contained 21 other specific “conservation measures.” forward detailed biological goals and objectives, yet states that none would be used to measure compliance of the Plan with respect. Among the Plan’s other conservation measures was a “reserve system” “restoration opportunity areas” in the legal Delta region and Suisun conservation measures were actions aiming to address “other stressors.” Unfortunately, some stressors, like selenium toxicity and nonnative invasive *Potamocorbula amurensis* are ignored altogether.

This year, the 2015 Tunnels Project is a shorn of its restoration water conveyance scheme. The RDEIR/SDEIS details specific changes to and operations, and proposes retaining “environmental commitments” to conservation strategy through Section 7 consultation. These environmental consist of “portions of actions previously contemplated” under Conservation communities protection and restoration), 4 (tidal natural communities), 6 enhancement), 7 (riparian natural community), 8 (grassland natural community and alkali seasonal wetlands), 10 (nontidal marsh restoration), 11 (enhancement and management), 12 (methylmercury management), 15 (localization reduction), and 16 (non-physical cish barriers). Instead of nearly 1 restoration under BDCP, there would be at most up to 13,300 protection and restoration, just 59 acres of tidal natural community acres of restoration work in environmental commitments 6 through preferred California Water Fix Alternative is barely one-tenth (1/10) the effort contemplated 18 months ago by the Bay Delta Conservation

⁵ The Environmental Water Caucus incorporates by reference comments of Rest of the North Delta, North Delta Water Agency, Central Delta Water Agency, Francisco Bay Keeper, Friends of the River, Earth Law Center, the Environmental Friends of the San Francisco Estuary, California Water Impact Network, Cal Alliance, and AquAlliance, the Bay Institute, Natural Resources Defense Council, Fishermen’s Associations, Institute for Fishery Resources, the Greater Stockton the San Joaquin Council of Governments.

⁶ Environmental Water Caucus, the Draft BDCP Plan and Supplemental Draft EIR/EIS addressed to Ryan Wulff, National Marine Fisheries Service, Sacramento, pp. Comments, June 11, 2014. <http://www.california.org/reports/bdcpcomments6-11-2014-11-30-2014.pdf>

⁷ Bay Delta Conservation Plan/Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement, 2015, Table S-18, and Table p. ES-19. Hereafter, RDEIR/SDEIS. Accessible <http://online.baydeltaconservationplan.com/Home.aspx>.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Last year we provided several broad reasons why BDCP was a Project is worse.

BDCP relied on a scientifically flawed hypothesis that habitat restoration clows the chief strategy for "fixing the Delta," and its impact on the Delta's aquatic ecosystems, because it used science to market Delta problems. The habitat restoration hypothesis for BDCP could be freshwater clows to and ~~and~~ ~~using~~ the Delta habitats of various types.

This year's Tunnels Project sheds the pretense of restoration and operating conveyance pipelines that would divert excessive fresh water River in the north Delta. This contradicts ~~some~~ ~~of~~ ~~the~~ ~~freshwater~~ ~~regulators'~~ clows into and through ~~the~~ ~~Delta~~ ~~essential~~ to recovery of Delta ~~eco~~ ~~cish~~ ~~species~~.

Tunnels Project's proponents just want the water.

If BDCP was implemented, we found last year that its hyper- in "paralysis by analysis" to the detriment of the Delta ecosystem because water agencies would have veto power over changes to conservation measures. In the absence of any description of governan SDEIS and Section 7 consultation process and biological opinion that prudent alternatives for protecting listed species, the EWC finds no the Bureau of Reclamation and the Department of Water Resources capacities internally to conduct adaptive management, real-time operations, monitoring priorities, and other matters that would have been other Implementation Office. We find no such attempt at independent science Project effects, where at least before there was a pretense of science and adaptive management program."

Section II introduces our broad policy concerns that shape our nc. These include our fundamental objection to the Tunnels Project; the precautionary principle to state, local, and federal actions governing transparency problems with the Tunnels Project and the RDEIR/SDEIS; Estuary public trust resources; environmental justice effects of the pr from the Delta Plan; the need on the part of the state water policy decisions over major plumbing decisions in and for violation of the constitutional requirement that water be used reaso

Section II of our comments focuses on major environmental issues not) and that remain to be faced by the Tunnels Project. Th reasonable alternatives that address broader water policy issues in the narrow reliability and water quality redistribution planned through tunne and endangered species issues that continue this year from last,

⁸ Ellen Hanak, Caitrin Phillips, Jay Lund, John ~~Chen~~ ~~David~~ ~~and~~ ~~Jeff~~ ~~Stake~~ ~~and~~ ~~Meritt~~ ~~of~~ ~~the~~ ~~Delta~~ ~~Public~~ ~~Policy~~ ~~Institute~~ ~~of~~ ~~California~~, April 2013, Figure scientists believe that all cive stressors have had at least a moderate cishes, with low regime changes especially harmful ("high impact") in the anadromous cish [e.g., salmonids and sturgeon] (72%), and physical habitat three types of cish (73% for anadromous cish, 70% for resident native

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

the Tunnels Project that will violate federal Clean Water Act because the absence of a "least environmental damaging practicable alternative." Section 7 consultation process needs to address this issue squarely food supplies for listed species, reasonable and prudent cflow manage incidental take statement levels, and reduction of toxic contamination selenium, and other criteria pollutants.

Moving forward habitat and the Delta in low and out low increases together important has never. But for the Tunnels Project proponents, the have avoid having to increase river inflow and Delta outflow to achieve the Delta, while still claiming to have tried to help the Delta gone with the Tunnels Project of "California Water Fix."

We also address other issues such as adaptive management and

Last year, we found that BDCP's financial and economic risks next cost-effective water supply solutions are available to California and updated economic and financial analysis was provided for Alternative for the Tunnels Project. Since no new study of economic and Project is provided in the RDEIR/SDEIS, we fall back on EWC's financing plan and economic justification. As far as we surmise, made by the principals involved in planning Tunnels Project financing comments addresses continuing funding and financing problems of the financing remains sketchy at best.

Last year, EWC commented that BDCP's governance approach would Applicants as possible over CM1 Tunnels operations and consequently much slip service was given to limiting the presence of political water operations and management and protection of listed cish species proposed governance structure would provide veto power to the App same water projects already ushering these same listed cish species

We comment in Section IV this year that such a governance window dressing we thought it was. DWR and the Bureau (and, Project proponents) would prefer to manage the project and the possible, since no provisions for these processes are identified in

Last year, we outlined a long list of statutes BDCP would violate endangered species acts, the Delta Reform Act of 2009, state and California water code, the California Constitution's ban on wasteful a method of diversion of water, and the Public Trust Doctrine, among

This year, we comment in Section V that DWR and the Bureau the Tunnels Project has California Water Fix into conformance with numerous including environmental justice legal standards.

Finally, specific of the RDEIR/SDEIS are examined in Section VI, Engineers permitting issues (including impacts to wetlands, navigation and other facilities); supplemental modeling done for the State Water increasing Delta outflows at the expense of SWP and CVP export intake impacts; absence of baseline information on predation in the intakes and other baseline data needs; failure to disclose and prevent pumping failure on the tunnels and back-cflow effects.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

I. Introduction

The EWC objects to the Tunnels Project.

After nine years, the Bay Delta Conservation Plan applicants have more clawed than its expensive and monstrous predecessor.

The Tunnels Project would divert more of the Delta common po contractors at a time when the state has over-promised, water resources; when the Delta is deteriorating from State Water Project mismanagement during the current four-year (and perhaps court species are even closer to the brink of extinction; and low-income the Delta for subsistence fishing, jobs, and recreation continue to

The Tunnels project would be a new facility providing the State new diversion points (or “north Delta intakes”) for water along new intakes would divert the river into two gigantic tunnels that salty tidal clows in the Bay-Delta Estuary for direct delivery to export to the California Aqueduct of the SWP. The Tunnels Project Delta water transfers market, and enable the US Bureau of Reclamation diversions not only via the intertie between the state’s California Mendota Canal or via the intermingling of stored water at Delta, but also through new connectors among the new north California Banks (State Water Project) and Jones (Central Valley Project) pumps

Last year we asked of the BDCP: Why should BDCP Applicants the federal Endangered Species Act as the “regulatory stability” of would favor their conveyance investments over the “regulatory stability” holders and a huge array of human and non-human beneficial California Valley and the Delta?

This year we ask: what makes the Tunnels Project proponents in the form of a massive Tunnels system, just because they should their desire to export water from the Delta trump the prior protected beneficial uses in the Bay Delta Estuary to have a all Delta residents and ecosystems, and all people of California in the future?

Historically, the Bay-Delta Estuary has been enormously productive, a species to reproduce in and migrate through. Its native species the Estuary’s annual and seasonal variations in water quality and flow. Delta Estuary cycles through such ecological roles as aquatic nursery. The Delta’s communities and economy were built on this ecological diverse ecosystem depends on having variable and good water quality roles.

⁹This is possible in part under State Water Resources Control Board of diversion” in Water Rights Decision 1641. See also RDEIR/SDEIS, July RDEIR/SDEIS, Appendix A, Section 3.6.1.4, 3.6.1.5, 3.6.1.5.1, “Expanded Clifton Court Forebay, and Section 3.6.1.5, “Connections to Banks and Jones Pumping Plants,” p.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Development and implementation of the Tunnels Project must be acc Water Act (CWA). Sound planning dictates that implementation of the begin how to prevent violations by the Tunnels Project. One CWA during Tunnels Project implementation is CWA Section 401 certification, “[federal license or permit to conduct any activity... [that] may navigable waters.”

This year has well as last year, our comments focus on two Project will create and worsen in the Delta: First, the massive lower Sacramento River used seasonally and inter-annually by several populations, two of which are highly vulnerable to the threat of reduction of Delta outflows and the eastward-moving position of X entrainment, ~~this time in the North Delta to Ngo along with con risks in the South Delta~~ and nightmare threatens long-term smelt, Delta juvenile salmonids with entrainment and extinction.

Four million people in the cive Delta counties depend on good livelihoods and quality of life. Nearly one million Delta residents primary drinking water supply. To improve the Delta as a cishab farmable region will require protecting and enhancing the Estuary’s If we are to leave generations to come an Estuary with sust Estuary deserves and needs more clowing water, cleansed of the and federal rejection of the Tunnels Project will only help in

Apply the precautionary principle to water policy.

The uncertainties facing the Bay Delta Estuary match up well with principle. The precautionary principle has the following characteristics and uncertainty in environmental (and other) decisions. Peter Montague describes the essence of the precautionary principle this way

In all formulations of the precautionary principle, we have suspicion of harm, and 2) scientific uncertainty about cause and effect, action to prevent harm.

The precautionary principle does not tell us what action to take. H approach have suggested a series of actions: (1) Set goals; (2) the goals, intending to adopt the least-harmful way; (3) Assume that harmful, and therefore seek the least-harmful alternative. Shift the burden are uncertain, give the benefic of the doubt to the nature, public health responsible parties (not governments or the public) to bear the burden. Expect reasonable assurances of safety for products before they can be Drug Administration expects reasonable assurances of safety before new ph marketed. (4) Throughout the decision-making process, honor the knowledge affected by the decisions, and give them a real “say” in the of ethics, right-and-wrong, history, cultural appropriateness, and justice to decision. (5) Assume that humans will make mistakes and that Therefore, monitor results, heed early warnings, and be prepared to ma needed; this implies that we will avoid irreversible decisions and irretr

¹⁰ 33 U.S.C. § 1341(a)(1).

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Instead of asking the basic question: How best can we manage the uncertainty in the allowable? precautionary approach asks, "How little harm is possible?" In sum: Face the harm, the precautionary approach urges a full evaluation of available alternatives for preventing or minimizing harm.

Last year, we commented critically that the BDCP sought to apply time operations as sure-fire solutions to the profound biological, geographic, public health uncertainties involved with constructing and operating such a complex environment as the San Francisco Bay Delta Estuary. Overly optimistic BDCP, the Tunnels Project described and evaluated in the 2014 over-concidence in adaptive management and real-time monitoring as solutions to Tunnels Project uncertainties.

We are not alone in detecting excessive optimism throughout last Project environmental documentation; the Delta Independent Science Board this pervasive characteristic in 2014. Many and all of the fall assessments overly optimistic expectations about the feasibility, effectiveness, or timing conservation actions...." And: "In essence, it is often argued that will have sufficient positive benefits for covered species to counterbalance water diversions and changes in flow caused by this project. This is an *implausible standard of perfection for such a complex problem.*"¹¹ The reviews of Chapters 11 and 12.... It would be better to begin to include contingency or back-up plans."

This year, time was much shorter for reviewing 8,000 pages of found that "the [RDEIR/SDEIS] retains unwarranted optimism..." and that consequences remain inadequately addressed, improvements notwithstanding. Uncertainty dealt with by establishing "a robust program of collaborative management. No details about this program are provided, so there whether uncertainties will be dealt with effectively."¹² The key issues that Project modeling efforts did not adequately conduct "modeling that ranges of uncertainties or (more importantly) assess propagation of uncertainties."

Substantive BDCP Revisions (Appendix D) contained in this year's increasing grasp of the number, kind, and degree of uncertainties operation of the Tunnels Project. The key uncertainties and potential actions relevant to Conservation Measure 1—and hence to the Tunnels

¹¹ Peter Montague, accessed online <http://www.waterfix.org/files/1141september2015.htm>

¹² Environmental Water Caucus, *The Draft BDCP and Supplemental Draft BDCP EIR/EIS* addressed to Ryan Wulff, National Marine Fisheries Service, Sacramento, pp.

¹³ Delta Independent Science Board, *The Draft EIR/EIS for the San Francisco Bay Delta Estuary*, 2014, pp. 3, 5. Emphasis added.

¹⁴ RDEIR/SDEIS, *Summary Section on Adaptive Science and Adaptive Management Program*, pp. ES-37 to ES-39.

¹⁵ Delta Independent Science Board, *Environmental Documents for the Sacramento Water Fix*, 2015, pp. 10-11.

¹⁶ RDEIR/SDEIS, 2015, *Appendix B, Tables, 4.1-5*, pp. D.3-24 through D.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

six (6) are new and eight (8) are significantly revised from conservation strategy.

The status and utility of these and a vast number of other considerable doubt since Section 7 consultation with the federal cish and the exact content of environmental commitments, incidental take and prudent alternatives are also highly uncertain.

Free Speech, Transparency, and Tunnels Project Commentary

In late 2013, the Bay Delta Conservation Plan web site was "Correspondence" page contains the statement: "The BDCP encourages public list of correspondence and public comments that have been from 2007-2013." In the EWC's June 11, 2014, letter on BDCP, clamping down on the free flow of information and opinion abo concerned, with these new documents, about how public comments are handled. In the RDEIR/SDEIS, Tunnels Project proponents explain they complete revisions to the original Draft EIR/EIS, but rather to p contents of the Draft EIR/EIS "new contents" appear to include change describing and analyzing "changes to conveyance facility design; revisions changes to the proposed conservation strategy and habitat mitigation corrections to the analysis of certain impacts."

Alternative 4A, a new alternative, would have "the same conveyance would not include the same kinds of changes to Alternative 4 measures of BDCP; it would not include habitat conservation

Given these changes in light of CEQA Guidelines, the Tunnels Project comments be restricted to the newly circulated information contained words, "they ~~continue to provide~~ recirculation is not an opportunity to res previously published topics, for to add additional comments on previous comments previously submitted on the Draft EIR/EIS remain a part responded to in the Draft EIR/EIS Tunnels Project proponents cite CEQA 15088.5(f)(2) in support of their "directive" to the public.

We are deeply concerned this seeks illogically, arbitrarily, capriciously, and the scope of public comment when it comes to the obvious analyses and alternatives of the RDEIR/SDEIS with alternatives and a EIS. To make sense of the relative merits of one alternative documents, the public, governmental and other reviewers must be able them. EWC finds the Tunnels Project proponents' "directive" untenable.

CEQA Guidelines section 15088.5(f)(2) states in full:

¹⁷ RDEIR/SDEIS, Section 1.2, p. 1-30, lines 4-7.

¹⁸ RDEIR/SDEIS, Section 1.2, p. 1-29, lines 8-10.

¹⁹ RDEIR/SDEIS, Section 1.2, p. 1-29, line 10; and p. 1-30, lines

²⁰ RDEIR/SDEIS/, Section 1.2, p. 1-30, lines 24-29. Emphasis in original.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

When the EIR is revised only in part and the lead agency is portions of the EIR, the agency may request that reviewers limit their chapters or portions of the EIR. The agency need only respond to received during the initial circulation period that relate to chapters or not revised and recirculated, and (ii) comments received during the recirculation period of the earlier EIR that were revised and recirculated. Reviewers limit the scope of their comments shall be included either by an attachment to the revised EIR.

The Tunnels Project proponents' "directive" in the RDEIR/SDEIS is improper for comments under CEQA Guidelines. The plain language of 15988.5 directive precluding "comments on previously published restriction is for "comments received...that relate to chapters or portions" of the recirculation does not extend to the level of detail implied by the word "topics" in the RDEIR/SDEIS. So long as our comments portions of the RDEIR/SDEIS—even if they compare or contrast the Draft EIR/EIS—the Tunnels Project proponents must, under CEQA comments.

The Public Trust, the Delta Common Pool, and the ESA

The Bay-Delta Estuary is an over-appropriated common pool plagued to protect all beneficial uses of water—human and non-human alike most sensitive beneficial uses. Failure violates the state's public trust. The Tunnels Project would continue this record of failure. It fails to through and in the Delta (and called for in the Delta Reform framework of state water policy:

- Achieving the coequal goals of Water Code Section 85054 of water supply reliability.
- Water Code Section 85023, stating: "The longstanding constitutional principle use and the public trust doctrine shall be the foundation and are particularly important and applicable to the Delta."
- Water Code Section 85021 requiring reduced reliance on the future water supply needs (and whose strategy species "investment supplies, conservation, and water use efficiency").

²¹ Emphasis added.

²² State Water Resources Control Board, *Water Rights in the Delta*, Section 26, 2008, presented to the Delta Vision Blue Ribbon Task Force, http://www.waterboards.ca.gov/delta/2008/BlueRibbonTaskForce/Oct2008/Response_from_SWRCB.pdf, California Water Impact Network, California Sportfishing Protection Alliance, and the Delta Water Availability Analysis for the Sacramento, San Joaquin River Basins Tribes and the Bay-Delta Estuary, October 26, 2012, http://accessible.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/comments111312/tim_stroshane.pdf, and Theodore E. Grantham and Joshua Years of California's water rights system: *Evolution of the Right to Water*, 9 (2014), https://atlas.ucdavis.edu/ciles/biblio/WaterRights_UCDavis_study.pdf

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

- Water Code Section 85320 (the Delta Protection Act of 1959) requires that state or federal water projects should divert water from the [redacted] entitled.
- Achieving the fish and specifically salmonid abundance goals of Code Sections 5937, 5946, and 6902(a); and the Central Valley 1992, Section 3406(b)(1).)
- The federal Clean Water Act requiring protection of the chemical integrity of the nation's waters (including those of the Bay-Delta waters of the United States (including those of the Estuary)) regulation of water quality standards for the Estuary be based on beneficial use among those occurring in a particular water body.

And the RDEIR/SDEIS fails to evaluate the Tunnels Project in light of the fish species that are the most sensitive to beneficial uses in the Bay-Delta human beneficial uses that are subsistence fishers taking nutrition directly from the water. It is deeply concerned that the Tunnels Project's switch to reliance on preventing mere "jeopardy" rather than the overall ESA goal of preventing deterioration of the Bay-Delta Estuary, made all the easier by the Tunnels Project.

Restoring the Delta for All

The Tunnels Project RDEIR/SDEIS fails to consider fully project impacts to public health, water quality, subsistence fishing, land use, and cloud participation, and language accessibility for environmental justice communities. It violates Civil Rights and Environmental Laws and fails to meet Environmental For the reasons listed above, the BDCP/Tunnels Project presents an alternative that should not proceed as proposed. We comment further on environmental impacts of the Tunnels Project in Section V of these comments.

The Tunnels Project must be excluded from the Delta Plan.

Last year, when the Bay Delta Conservation Plan was considered for conservation plan under federal ESA Section 10 and a natural resource conservation plan under the California ESA, it could qualify for eventual incorporation as prepared by the Delta Stewardship Council, provided the BDCP met the Delta Reform Act of 2009. EWC members commented that BDCP specifically that:

BDCP cannot demonstrate compliance with, and the Department of Fish and Game cannot sustain, this required finding under Section 85320 (a) (1) using its discretion to interpret this BDCP law. Modeling results show decreased salmonid survival rates, entrainment risk (including that the North Delta intakes), eastward migration, and longer residence times of water passing through the Delta. The Delta is moving away from the criterion in Water Code Section 85320(b)(2)(A), which requires recovering the Delta ecosystem and restoring fisheries under a reasonable conditions.²³

²³ EWC Comments, June 11, 2014, pp. 119-120. Emphasis in original.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

The legal trigger for whether BDCP may be incorporated by the recommendation of the California Department of Fish and Wildlife is part of an HCP/NCCP. This year, it is not. Therefore the Tunnels "covered action" in which the Delta Stewardship Council (DSC) is proponents' assertion that the proposed project is consistent with the

The Delta Plan is itself currently the subject of litigation about the policies of the Delta Reform Act. The Delta Reform Act, passed in 2009, covered the Tunnels Project. If the Court vacates the DSC's approval of the Delta Reform Act policies, then there would be no Delta Plan legally be found to conform, until such time as the DSC approves

(The causes of action in the Delta Plan litigation are entirely Project operation. In formulating Delta Plan policies and recommendation Council:

- Formulated a "reduced reliance on the Delta" policy that does
- Failed to observe the Act's mandate to rely on "best available Plan.
- Promoted BDCP in violation of the Act, since the Tunnels goals, and misinterpreted the meaning of "improving conveyance."
- Failed to perform its duties to protect public trust resources Plan.²⁵)

This year, we again find that through Delta salmonid survival rates the North Delta intakes, eastward migration X2, longer residence time are all endemic to the preferred alternative of the RDEIR/SDEIS.

EWC was pleased to learn that the DSC recognizes that the Tunnels Project cannot be incorporated into the Delta Plan and must be

Although WaterFix is shown as a new alternative in the environmental practical purposes the BDCP as it has been envisioned for the past BDCP, the new WaterFix project is not a conservation plan aiming exchange for a long-term operational permit. Rather, the objectives of —"to make physical and operational improvements to the State Water Project (CVP) systems in the Delta necessary to restore and protect the SWP and CVP south of the Delta, and water quality within with statutory and contractual obligation" Because WaterFix will not be a conservation plan..., the Council is not required to incorporate the Water

²⁴ There were numerous complaints filed by both water contractor, water parties. They are sometimes described as "the Delta Plan cases." until perhaps mid-2016.

²⁵ Petitioners Central Delta Water Agency et al and California Water Impact on the merits in support of first amended verified petitions for Writ and Injunctive Relief, 15, 2014.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Plan. *Water Fix will instead will be subject to the Council's authority over coverage be consistent with the regulatory proportions of the Delta Plan.*

It appears that DWR and the Tunnels Project proponents more than the Tunnels Project status with respect to the Delta Plan. Section description of the Department of Fish and Wildlife's role in making Code Section 8532(b)(2).

But Tunnels Project proponents *is actually by the Section 1 of the RDEIR states later that "Delta Reform Act compliance" for its alternatives "would be achieved through either the Delta Plan Consistency certification possible future amendment to the Delta Plan."* This "future amendment Project proponents' belief that the inclusion/incorporation pathway for H limitation in time.

This ambiguity is confusing. The ambiguity goes to the heart of the alternative." The RDEIR/SDEIS states that the Tunnels Project is the of the other RDEIR/SDEIS alternatives put forward in July 2015 on substance associated with them. *the RDEIR/SDEIS clearly in stating that Reform Act still provides a pathway for none of these specific into the Delta Plan. This error needs to be corrected.*

The RDEIR/SDEIS also contains Appendix G, which is "intended to be considered for Alternative 4A...to meet the Delta Plan consistency requirement represents the Tunnels Project proponents' view of the Delta Reform Council, and the Delta Plan.

Appendix G contains no listing of Delta Plan policies and recommendations the policy framework against which it would be evaluated for consistency of "consistency requirements" contained in the Plan's implementing includes mitigation measures, best available science, adaptive management, Delta through Improved Regional Water Self-Reliance," delta slow object regulations. *The listing omits the regulation's definition of "coequal we are certain the Tunnels Project proponents' kind challenging to*

We note too that the Delta Plan implementing regulations contain "consistency" with Delta Plan policies and recommendations means. The avoids this topic too.

²⁶ See *Delta Conservation Plan Draft EIR/Supplemental Draft EIS Review*, 28, *Shelb* 2015, Delta Stewardship staff report, <http://deln.dnr.ca.gov/docs/delta-stewardship-council-august-27-28-2015-meeting-agenda-item-17-bay-delta-conservation>. *Emphasis added.*

²⁷ RDEIR/SDEIS, Section 1.1.5.5, California Department of Fish and Wildlife, *California Department of Fish and Wildlife*.

²⁸ But in committing the error, EWC recognizes that the Tunnels Project policy certainty on behalf of their project and kind it psychologically disadvantage for the project.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

When it comes to reducing reliance on the Delta, RDEIR/SDEIS "Demand Management Measures" described in Appendix 11C, as stated last year, the reduced-reliance-on-the-Delta policy of the Act Tunnels Project's purpose and need is invalid or capable of being Act policies and the Delta Plan. We contend that the RDEIR/SDEIS need for the proposed project in light of analysis of other Delta water (such as those species in Water Code Section 8501 water conservation throughout California. (We remark elsewhere in these water conservation achievements of California's population during the last year drought. Appendix 11C, we commented last year (since the "fails to consider cost and price issues associated with water usage. limitations of conservation is an argument employing a straw man: we can conserve our way out of the state's future water demand believes that we can build enough storage and conveyance to reli

Instead, the point is that we have remaining potential to achieve by changing how California culture views its water supplies. California remiss in failing to tap this potential regardless of whether it is demand problem; it is simply a no-regrets step that needs to be ignored this step in developing and stating the purpose and intent Tunnels Project seeks to protect a status quo of water behavior sustained, regardless.

The Demand Management Measures of Appendix 11C are not part of descriptions, whether associated with the Draft EIR/EIS last year or this year's BDCP, there is no conservation measure devoted to demand reducing reliance on the Delta. This year's purpose and need statement reiterates the Tunnels Project's intention (like last year) to (as reliability to maximize contractual deliveries using the Tunnel measures are not only NOT included as part of the alternatives' reader attention from the Tunnels Project and its inability to comply 85021. The Tunnels Project must be able to certify consistency if neglected in a lawful Delta Plan. It cannot.

The essential point of the mandate in Water Code Section 8501 Delta. This is not just a water conservation issue. In litigation addresses as one of its central points of argument when formulated a Plan and implementing regulations that achieve what the RDEIR/SDEIS fails to demonstrate that the project contributes Delta, and fails to demonstrate that it can achieve the goal, whether the Delta Plan can be said to achieve them or not.

The State Water Resources Control Board's Bay-Delta Plan

²⁹ Here is just one of many instances where the Section 11C directive the RDEIR/SDEIS refers to or even incorporates the content of the Draft becomes necessary and logical for reviewers to review, verify, and analyze.

³⁰ WQ Comments, June 11, 2014, p. 147. Since the RDEIR/SDEIS applies EIR/EIS now, we reiterate our comments about it from last year, with

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

A large but wholly implicit assumption through the Tunnels Project of these alternatives would require wholesale revision to how water in the Delta estuary, in order for the Tunnels Project to move forward, announces "proposed new 'low criteria' for north and south Delta and the proposed new head of Old River operable barrier.

Such changes to the Delta clows and hydrodynamics must be evaluated by the State Water Resources Control Board, the only state body that sets standards. We are concerned that the Tunnels Project proponents hope to make Tunnels operational criteria seem inevitable and necessary; be the subject of careful and critical review in the State Board's Tunnels Project permit approval. ***But to simply water quality policy must come before plumbing decisions are made. What is the best for the Delta's economy and communities comes first.***

Reasonable Use of Water

California's constitution recognizes water rights only to the extent the Constitution, Article X, Section 2) Moreover, the state constitution also not and shall not extend to the waste or unreasonable use of unreasonable method of diversion of water." No one has a right to use water unreasonably, not even the state and federal governments. The EWC water availability and the precarious conditions of listed cish species Project would be an unreasonable method of diversion of water, supposedly more reliable irrigation water supply to the drainage imp Joaquin Valley, as is implied but not disclosed in the Bay Delta would continue to be a wasteful and unreasonable use of water

The Tunnels Project would violate the California Constitution's ban on use of water and method of diversion of water because it:

- Fails to demonstrate and disclose its purpose and need,
- Reduces Delta outflow by increasing exports contrary to Delta exports,
- Reduces rather than increases the likelihood that listed species the Delta under operating conditions of the Tunnels Project in doctrine.
- Degrades rather than protects and enhances water quality in violation of water quality pollutant criteria and beneficial uses, water source without mitigation of treatment costs.

³¹ RDEIR/SDEIS, Section 4.1, pp. 4.1-11 through 4.1-13.

³² This stance is also consistent with the Delta Protection Act of 1992.

Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project

II. Major Environmental Issues

This section presents the major environmental and ecological issues and its RDEIR/SDEIS. It is organized around four major

- The complete policy failure of the Tunnels Project proponents through confront whether there is a real need for the project.
- The resulting absence of a reasonable range of alternatives to including meaningful direct comparisons of environmental impacts of
- Specific ways in which the Tunnels Project will violate the
- Various ways in which the Tunnels Project will violate beneficial pollutant water quality objectives, and therefore violate the federal

Introduction

A reasonable range of alternatives is still to be considered in increasing clows through the Delta has always been a direct and California's public trust doctrine protecting Delta water quantity and with the Delta Reform Act, the ESA, the Clean Water Act and the so-called BDCP alternatives involve new conveyance as opposed through-Delta conveyance alternatives reducing exports.

Our organizations have already communicated several times over the about the failure to develop a reasonable range of alternatives in

The direct and obvious way to increase clows through the Delta policy alternatives that should be highlighted in the BDCP NEPA and reduce existing export levels and thereby increase Delta clows; 2) and Delta clows; and 3) further reduce Delta clows by establishing Tunnels Project, upstream from the BDCP. Agencies and the new RDEIR to ignore the direct and obvious broad policy alternative of reducing thereby increase Delta clows—which is mandated by section 85021 of

³³ See also previously submitted Friends of the River comment letter of September 4, 2014 comment letters focused on the failure of BDCP Draft and evaluate a reasonable range of alternatives as the declared "heart" EISs and EIRs. A detailed evaluation of the Draft EIR/EIS's inadequate the EWC in its comment letter of <http://www.dwr.ca.gov/2014/09/04/bdcpcomments6-11-2014-11> and followed by a letter of July 22, 2015, regarding reasonable range of alternatives in the RDEIR/SDEIS. Accessible draft uploads/2015/09/7-22-15-BDCP-alt-tr.pdf

³⁴ The Tunnels Project alternative is infeasible because it is not lawful and Reform Act and the public trust doctrine. It is a puzzling at this Draft process that the BDCP agencies would refuse to consider lawful alternatives, considering and giving preferred alternative status to unlawful alternatives. As "Many commenters argued that because the proposed project would lead to quality effects, DWR could not obtain various approvals needed for the the State Water Resources Control Board of new points of diversion for Executive Summary, p. ES-2.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

The Endangered Species Act continues to put the Endangered Species Act (ESA) because it would for at least one cive endangered and threatened cish species. We prev BDCP agencies to develop and consider a reasonable range of alternatives for reducing exports in our July 22, 2015, letter to you.

To summarize, the Sacramento River Winter-Run Chinook Salmon is a species under the Endangered Species Act, 16 U.S.C. § 1531 et seq. Spring-Run Chinook Salmon, Central Valley Steelhead, Southern Distinct North American Green Sturgeon, and Delta smelt, are listed as **Second**, reaches of the Sacramento River, sloughs, and the Delta quantities of freshwater flows through operation of the proposed Tunnels critical habitats for each of these cive listed **Third**, Biological Assessment has been prepared and transmitted to the U.S. National Marine Fisheries Service (NMFS) by Reclamation with respect **Fourth**, ESA Section 7 consultations are not completed and no BDCP by either USFWS or NMFS with respect to the effects of the cive federally listed species of cish or **Fifth**, the RPA is not a prudent alternative” (RPAs) have been developed or suggested by the species jeopardy or adverse modification of designated critical habitat RDEIR/SDEIS or the Draft EIR/EIS last year.

Approval of the Tunnels Project in the form of preferred Alternatives the substantive prohibitions of Section 7 of the ESA by adversely habitat as well as by jeopardizing the continued existence of the species.

Approval of the Tunnels Project would violate the procedural requirements Reclamation has not evaluated its proposed action “at the earliest whether its action may affect listed species or critical habitat and consultation with USFWS and NMFS.

Approval of the Tunnels Project would violate the procedural requirements Draft EIR/EIS and RDEIR/SDEIS have not been prepared “concurrently Biological Assessments and Biological Opinions required by the ESA. Assessments and Biological Opinions, though required, remain unavailable.

These are not deficiencies that can be “cixed” by responses to the RDEIR/SDEIS must be circulated for public review and comment. include a reasonable range of alternatives including alternatives increasing exports. The new public Draft NEPA document must also be pre-integrated with the ESA required Biological Assessments, Biological Opinions

³⁵ Each of these species is listed under the California Endangered Species Act considered threatened. Bay Delta Conservation Plan, Section 1.4.3, Covered Spec table shows that under the California Endangered Species Act, Delta smelt the BDCP species account for Delta Smelt states that the California Fish smelt to the status of endangered on March 4, 2009. (BDCP, Appendix 21-24.) Longcin smelt is considered threatened, winter-run Chinook salmon spring-run Chinook salmon threatened, fall- and late fall-run Chinook salmon special concern; and green sturgeon (southern DPS) is also considered a smelt is at this time a candidate species for listing under the federal

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

reasonable and prudent alternatives, developed by the USFWS and NMFJ and prudent alternatives would include alternatives increasing flows through the San Francisco Bay by reducing exports.

The project is not permissible under the RDEIR/SDEIS. The project will reduce flows to and through and degrade water quality in the San Francisco Bay will adversely impact numerous recognized beneficial uses and public

First, the Tunnels Project will violate Section 401 of the Clean Water Act. The issue is a 401 certification to the Tunnels Project that does not meet the objectives of the Corps of Engineers cannot legally issue a 404 permit for waters of the United States. The Tunnels Project has an antidegradation Draft EIR/EIS or the Recirculated Draft EIR/Supplemental Draft EIS required for compliance with the Clean Water Act. And the lack of analysis is yet another reason the state will find it necessary to issue a Tunnels Project threatens to dictate water quality objectives and prejudice Resources Control Board's Bay-Delta Water Quality Control Plan Phase 1 violation of the Clean Water Act. The proposed project fails to meet the requirement for the Least Environmentally Damaging Practicable Alternative

Project Objectives, Purposes and Needs

The Tunnels Project's framework for policy evaluation must be broad, proponents, the reasonable range of alternatives consists of variations to the problems of how to stabilize reliable exports (decided to 3 annual allocations) from the Delta and improve the quality of the This is far too narrow a definition and helps account for the Peripheral Canal in 1982, and why they should reject the Tunnels

The state faces a policy crossroads, of which the narrower engineering Project must be seen as just one part. The policy problems key policies of the Delta Reform Act of 2009: protecting, enhancing ecosystem, economy, and value as a unique place in California; and generally; and reducing reliance on the Delta as part of achieving to demonstrate California's need for the Tunnels Project in the framework.

To achieve reliable water supplies for the Tunnels Project we must demand should be balanced at some level that does not prejudice policy framework. The failure of the umpteenth alternatives (of the RDEIR/SDEIS this year) is that they assume that the need for reasonably represented by state and federal water contract amounts. Proponents fail to demonstrate the reasonableness of this assumption.

³⁶ The project may, on one hand, receive conditional permits for the including gaping exemptions from water quality standards (masquerading as pe undermine beneficial that should be protected by the water quality control Tunnels project will prejudice the Phase 1 and 2 processes with preme requests, potential Delta island purchases by the Metropolitan Water District of the inadequate Tunnels environmental review process. Under both of these Project tail threatens to wag State Water Board and Army Corps dog.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

into question the contracts for pipelines and uses, novel rates, analysis of water agencies in southern California that are increasingly investing in sufficiency of their water supplies, becoming more efficient users of stormwater capture, groundwater remediation, and other means.

The EWC has presented clear alternatives for achieving water supply restoration (Responsible Exports Plan, 2015 Sustainable Water Plan for California alternative) was not considered in the Draft EIS/EIR, nor is it EWC alternatives rely on strict enforcement of water quality laws, Resources Control Board and Fish and Game (now Wildlife) slow shoring up existing levees, ceasing unreasonable use of water to western San Joaquin Valley that return pollution to the estuary, Delta export water supply with statewide water conservation, efficiency, ensure existing supplies are extended to meet demand.

Need for the Tunnels Project must be analyzed directly against the year, Californians have responded to a fourth year of drought by goals established by Governor Brown for the third straight month August the cumulative statewide savings rate was 28.7 percent," the Board said in an October 2015 press release. "That equates to percent of the overall goal of saving 1.2 million acre-feet from governor had sought in his April 1 executive order. While this largest conserving jurisdictions were located within the hydrologic region federal water contractors have seen substantial decreases. Making residents conservation a way of life will be increasingly important as drought under rising greenhouse gas emissions and climate change conditions. analyzed in determining the need for the Tunnels Project.

The need for the Tunnels Project is poorly specified. A new RDEIR/SDEIS states that:

The ecological health of the Delta continues to be at risk, the Delta water exports have become more pronounced, as amply evidenced decisions regarding the intersection of the ESA, the CESA, and the CVP. Other factors, such as the continuing subsidence of lands within

³⁷ For example, Environmental Water Caucus, *The US Bureau of Reclamation Lake Water Resources Investigation Report*, 30, 2013, <http://agccalifornia.org/reports/shastadeiscomments.pdf>.

³⁸ EWC Comments, June 11, 2014, pp. 104-105.

³⁹ EWC's Responsible Exports Plan, <http://ewccalifornia.org/reports/responsibleexportsplanmay2013.pdf>, and our Sustainable Water Plan <http://california.org/ewccalifornia.org/reports/ewcwaterplan9-1-2015.pdf>.

⁴⁰ While statewide average residential gallons per capita per day (R-GPCD) July (102 versus 98 R-GPCD), it was 17 percent lower than August fallen from 173.9 to 135.0 R-GPCD this August over last, a 22 percent 189.9 to 164.2 R-GPCD, a 13 percent decrease; and South Coast basin decline of nearly 16 percent, according to State Water Board conservation http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/fs100115_conservation.pdf.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

and levee failures, and sea level rise associated with climate change, conflicts. Simply put, the overall system as it is currently designed is not sustainable from an environmental perspective. The proposed project to implement a change to the current system is necessary if California is to meet its coequal goals of providing a more reliable water supply for California and enhancing the Delta ecosystem.⁴¹ (California Public Resources Code Section 2

This passage uses lawsuit defeats for DWR and the Bureau of Reclamation earthquake risk, sea level rise, and worsening conditions for Delta to justify a "systemic change" apparently in the form of the Tunnels Project. "fundamental, systemic change" to achieve the two coequal goals of the Tunnels Project ("the change" offered) would be "a water grab, intended to boost water supply reliability" and "exports and no other user benefits." The Bay-Delta Estuary is an over-appropriated common pool plagued to rein in water rights and contractual commitments that exceed watershed supply. The Tunnels Project includes no adjustments to commitments of either the State Water Project or the Central Valley with demand and prevent jeopardy to listed Delta cish species in the long term. No analysis of need and alternative sources of supply is provided in the RDEIR/SDEIS to demonstrate and justify need. This is contrary to CEQA and NEPA and defeats the purpose of why a project is truly needed beyond the usual DWR, Bureau of Reclamation concerning their own "water supply reliability," their own "improved ecosystem health and productivity benefits" of additional huge diversion

The Bay-Delta Estuary is an over-appropriated common pool plagued to rein in water rights and contractual commitments that exceed watershed supply. The Tunnels Project includes no adjustments to commitments of either the State Water Project or the Central Valley with demand and prevent jeopardy to listed Delta cish species in the long term. No analysis of need and alternative sources of supply is provided in the RDEIR/SDEIS to demonstrate and justify need. This is contrary to CEQA and NEPA and defeats the purpose of why a project is truly needed beyond the usual DWR, Bureau of Reclamation concerning their own "water supply reliability," their own "improved ecosystem health and productivity benefits" of additional huge diversion

The failure to adequately decline and quantify "increased water supply documents legally inadequate. The RDEIR/SDEIS fails to inform the public about adverse consequences of the project. Absent the project, the documentation of purpose and need for the Tunnels Project with respect to water reasonable alternative sources of supply for state and federal water makers cannot understand what type and level of reliability might mean. The National Environmental Policy Act and the California are both violated as a result.

Cross-Delta Water Transfers in here in the Tunnels Project purpose, RDEIR/SDEIS statements of Objective, Purpose, and Need. The Tunnels Project will function to increase the Central Valley Project to arrange and facilitate cross-Delta water market transfers in drier SDEIS argues that the Project will increase the reliability of the present time. This binding is at best arguable since climate change

⁴¹ RDEIR/SDEIS, Section 1.0 Objectives and Purpose and 7.1 Need, 31-35, and 1-6. Emphasis added.

⁴² RDEIR/SDEIS, Section 4.3.1, p. 4.3.1-9, lines 9-11 for Alternative 4A. Alternative 2D at Section 4.4.1, p. 4.4.1-9, lines 20-33; and to Alternative 20-33.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

contractual reliability with reductions in precipitation, snowpack and runoff support such as a cinding. However, the Tunnels Project proponents view against climate change impacts on contractual allocation deliveries. The

The RDEIR/SDEIS attempts to provide some perspective given the di- baselines, but appears to suffer from poor, confused editing. As the Tunnels Project would increase overall reliability of contractual deliveries conditions and relative to the No Action Alternative (the future Project in place). To accomplish this, it would increase overall Delta (due to its vaunted opportunities for flexible dual diversion Tunnels Project proponents, is presently a limiting factor on consumption (understood regardless of their contractual commitments). NEPA conc the RDEIR/SDEIS for Alternative 4A, Alternative 4B, and Alternative 4C therein, which does not make sense, since what are the Tunnels capacity?) conveyance capacity overall, enabling cross-Delta water transfers increases in Delta exports when compared to the No Action Alternative.

The CEQA conclusion appears logically stated to us (though we

Alternative 4A would increase water transfer demand compared to existing would increase conveyance capacity, enabling additional cross-Delta water tran increases in Delta exports when compared to existing conditions.

These conclusions make clear that increased conveyance capacity boosts supply reliability, but also market-based water supply reliability, the in the RDEIR/SDEIS's statement of objectives, purpose and need in

Plus, the very existence of the water transfer market is a ful. ill SWP and CVP water right claims, and the contractual customer agencies Tunnels Project is both the reliability of deliveries and a water transfer market that moves senior water right Delta for compensation. The Tunnels Project assumes that contractual primary purpose, but this improperly places market-based water transfer causes the RDEIR/SDEIS to fail as a full disclosure document on water is conveyed under the Delta through the Tunnels. The Tunnels Project in place (from the standpoint of objectives, purpose moves—under contract terms, or under market-based terms?

The purpose of the Tunnels' water transfer role is to gain supplies for south of Delta importers in the State and Federal RDEIR/SDEIS also fails to evaluate the water transfer purposes of to the source(s) of market-based transfer water. Last year, we claimed that the Sacramento Valley is the main source of supply

⁴³ The RDEIR/SDEIS does a poor job of clarifying the difference between transfers across the Delta—the normal, preferred course of exportation extra-contractual acquisitions of temporary supplies of water that are moved project allocations reach as low as 50 percent for the SWP and 40 on water transfers in EWC Comment Letter, June 11, 2014, pp. 192-2

⁴⁴ RDEIR/SDEIS, Section 4.3.1, p. 4.3.1-9, lines 34-36.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

that it is a "full" in most areas, and that any groundwater substitution would be likely to increase in the future with the Tunnel. argued, it would likely be catastrophic for the Sacramento Valley's groundwater resources to extant rivers, streams and sloughs there. Stewardship Council on September 24, 2015, State Water Resources Director Tom Howard said of groundwater substitution water transfers:

I think we need to do some work on this issue. I have a depletion factors [applied by DWR and the Bureau of Reclamation] to established and I think there is ongoing work associated with them. depletion factor of 12 to 13%. I keep advising people **the basic read thesis of that USGS publication is that groundwater pumping is just water. It's just another method of diversion of surface water that is, in circumstances, any groundwater pumping eventually becomes a depletion body**

We concluded last year that BDCP has failed to identify, disclose impacts of cross-Delta groundwater substitution water transfers on and hits groundwater resources, and that this is a serious deficiency. We conclude that the Tunnels Project proponents provide no and it remains a serious deficiency of the RDEIR/SDEIS.

This year, the RDEIR/SDEIS continues to ignore water transfers as Tunnels Project. They fail to describe it as a purpose in the project would increase reliance on the Delta in a flagrant defiance fails utterly to justify why the Tunnels Project is needed, a

A reasonable range of alternatives is still not considered.

Rationales for Modifications to the Tunnels Project Conservation Plan accompanying Draft EIR/EIS in 2014 drew 12,204 comment letters from individuals and another 432 from public agencies, organizations, and an overwhelming response to such an important set of documents. narrative some reasons its proponents had for modifying Alternative new "sub-alternatives" 4A, 2D, and 5A, and why 4A is now

⁴⁵ Draft EIR/EIS, November 2013, Chapter 7, p. 7-13, line 10-16. "A totals approximately 7.7 MAF in the Sacramento Valley Groundwater Basin water, and the remaining 13.9 MAF of runoff, is potentially available to groundwater storage depleted by groundwater. **Whatever precipitation during drought, the Sacramento Valley groundwater basin is 'full,' and groundwater levels recover to pre-irrigation. Historical groundwater level hydrographs suggest that even after extended drought this basin recovered to pre-drought levels within 1 or 2 years following quantities."** Emphasis added.

⁴⁶ **Wan's Note**, "Water Transfers and the Delta Plan, part 2: The agency view" <http://www.notebook.com/2015/10/13/water-transfers-and-the-delta-plan-part-2-the-agency-view> Emphasis added. See also Paul M. **Sanborn**, *Water and the Delta: Wells—Understanding and Managing the Effects of Groundwater Pumping on the Sacramento Survey Circular 1376*, p. 84. <http://www.water.usgs.gov/pubs/c1376/>

⁴⁷ RDEIR/SDEIS, Section 1, p. 1-3, lines 40-42.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

The Lead Agencies' "four examples of disclosure" from CEQA Guidelines list instances by which significant new information dictates the need for Lead Agencies to decline to state which example or examples they will recirculate.

But of these, the EWC notes that the reason supplied in the most germane: Last year's draft EIR on BDCP was so fundamental in nature that meaningful public review and comment were precluded. Attributes and impacts were defeated. A key reason for this was documents involved. What commenters could glean from the enormous nonethless revealed a project so clawed by boosterism and magical must have felt that only new alternatives could help salvage an

The Lead Agencies claim that project revisions were needed because comments that they could not meet the requirements needed for agencies of "long-term assurances associated with Section 10 of the of the state's Natural Communities Conservation Planning Act." They requirements could not be met. The public is entitled to know, RDEIR/SDEIS. We certainly hope they will be stated in the Final provided in this regard is a vague acknowledgement that:

These challenges related to the difficulties in assessing species status a year period, in light of climate change, and accurately factoring in contributing to the recovery of the species. There were also que implement large-scale habitat restoration and an interest in exploring mul that could facilitate expeditious progress on Delta solutions.

Suffice to say, perhaps, that the public's and agencies' comments revealed to the Lead Agencies that their grasp of future conditions alternatives of BDCP were not up to meeting Section 10 HCP applied to smaller, simpler development projects than BDCP and its

The second sentence of this passage also suggests strongly that meant jettisoning the habitat restoration components altogether in favor of Project a Tunnels Project. Given the now 14-year time period (increased from 10 years last year), can you please explain what other sub-alternatives offering supposed "expeditious progress on Delta has elapsed since the last opportunity to comment on the Tunnel "expeditious" mean then? What constitutes a "solution"? And what was intended to solve again?

The Lead Agencies settle on two "allowance" rationales: First, regulatory requirements to obtain 50-year assurances from the fishery desire to explore alternative regulatory approaches that could facilitate

⁴⁸ The Lead Agencies, again, appear to be the California Department of Reclamation for RDEIR/SDEIS purposes. It is not clear whether the other mentioned above are engaged in this process as lead agencies, responsible investors.

⁴⁹ RDEIR/SDEIS, Section 1, p. 1-2, lines 37-42.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Delta solutions" they revised down the project alternative implementation strategy the new alternatives in the RDEIR/SDEIS, "related to achieving project second allowance" in the implementation strategy state and federal address the long term conservation efforts for species recovery in proposed project."

Simply put, the Lead Agencies wanted to consider a new water its habitat restoration pretenses, and to try to meet Section 7 than Section 10 standards. It is a naked water grab and the restoration program of BDCP (which was in part an attempt to exports without actually doing so) onto society the way they had

This kind of vague, euphemistic, and tortured reasoning reflects the bureaucratic cluelessness, and desire by the Tunnels Project proponents the destructive character of the Tunnels Project. At a minimum, reasoning behind new alternatives and recirculating the EIR/EIS obscures the full disclosure purposes of both the California Environmental Quality Act.

It appears to the EWC that key rationales were developed to volume and content of critical comments received by the Tunnels

- Modify Alternative 4 to reduce its on-the-ground impacts.
- Develop a wholly new alternative without much habitat restoration
- Develop among the Tunnels Project proponents a rationale for consultation process over the Section 10 habitat conservation plan complying with the federal and state endangered species acts.

Modifying Alternative 4 RDEIR/SDEIS states that in December 2014, Government and its federal partners (we presume that means in US Bureau of Reclamation) announced several substantial changes to conveyance portion of the proposed Bay Delta Conservation Plan... "disclosing who participated in reformulating Conservation Measure 1 of language is for hortatory press releases and triumphal web sites, documents like the RDEIR/SDEIS.)

The changes included: cish screens for each of the three north Delta fencing, security gates, control buildings, a single-bore tunnel (between diameter) and the intermediate forebay, various vertical shafts at Intake from Intake 5 to the intermediate forebay (28-foot diameter), the to the two 40-foot diameter tunnels enabling gravity flow to the Forebay where a pumping plant would be constructed to lift water Court for delivery to the south Delta state and federal pumping

These changes to Alternative 4 are claimed to have the following: pumping plants (one from each north Delta intake); minimizing cons where sandhill crane critical habitat exists; relocating project features reduce acquisitions from private land owners; eliminating permanent Lakes National Wildlife Refuge; removing an underground siphon that Slough, reducing overall electricity requirements of the Tunnels Project

⁵⁰ RDEIR/SDEIS, Section 11, p. 1-3, lines 1-14. Emphasis added.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

to slow almost entire by gravity except for the cinal hoist overall, "reduc[ing] tunnel operation and maintenance costs."

EWC notes that nowhere in this list of benefits do the Lead Tunnels Project (Alternative 4) were made to benefit cish species. The changes mainly appear to reduce Tunnels' operation and maintenance reduce impacts to Delta human residents (such as through impacts of transmission lines and power plant buildings from intake the north Delta intakes are not claimed to provide cish benefits is justified for reducing "the amount of construction activity required eliminate the temporary relocation of State Route (SR) 160 by levee sections prior to commencing construction of the intake structure

Construction related impacts to cish would be the same for mode 4A because "the proposed physical water conveyance facilities are the In this sense, the changes represent distinctions without important differences.

Developing new alternatives with little habitat preference states that "desire to explore alternative regulatory approaches that could facilitate Delta solutions" is the main reason for developing the new alternatives. what "Delta solutions" means and what expeditious progress toward to address broader statewide water policy goals enacted in the statement should be clarified with respect to the stated objectives, Agencies employ (discussed below) to justify the Tunnels Project. The "conveyance facilities necessary for the SWP and CVP to address reliability needs in conjunction with ecosystem improvements to reduce cish species impacts associated with the existing south Delta intakes. since ecosystem improvements are externalized to other agencies, Alternatives Tunnels Project, a water pipeline, pure and simple.

Our conclusion is confirmed in Section 3 of the RDEIR/SDEIS. The benefits of the "alternative implementation strategy" is reducing reverse flow River and direct cish impacts from continued exclusive operation of and cish facilities. The RDEIR/SDEIS supposes that the alternative for other state and federal programs to address the long term recovery in programs separate from the proposed project."

In plain terms, the Lead Agencies continue to believe that adding the south Delta pumps represents an improvement over existing con intakes supposedly provide operational flexibility for avoiding impacts to north Delta waters. Removal of pumps from the north Delta intake reduce potential problems with the north Delta intakes, and ballyho

⁵¹ RDEIR/SDEIS, Section 3, p. 3-1, lines 14-33.

⁵² RDEIR/SDEIS, Section 3, p. 3-2, lines 9-11.

⁵³ RDEIR/SDEIS, Section 3, p. 3-7, lines 31-32.

⁵⁴ RDEIR/SDEIS, Section 1, p. 1-4, lines 15-17.

⁵⁵ RDEIR/SDEIS, Section 1, p. 1-3, lines 7-8.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

will keep small fish like Delta smelt, longfin smelt, and juvenile below for more on fish screens.)

In reality, flexible operations through dual conveyance means that at clows and fish entrainment and water quality problems can continue Delta. This does not in any way mean there are net aquatic conveyance simply doubles the number of places such effects would

"These changes are necessary," claims the description of the new to address more immediate water supply reliability needs while reducing ongoing environmental impacts. The strategy would achieve the latter by reducing reverse clows and direct fish impacts associated with **This formulation is intended to stop readers from thinking about happen in the north Delta as long as those pesky reverse reduced. It is a framing exercise, a linguistic shell game through peddle the Tunnels Project to the public.**

Thus the RDEIR/SDEIS grandly exaggerates:

Implementing the conveyance facilities alone, as now proposed under Alternative help resolve many of the concerns with the current south Delta clows reduce threats to endangered and threatened species in the Delta. For conveyance system would align water operations to better reflect natural creating new water diversions in the north Delta equipped with state-reducing reliance on south Delta exports.

The existing operation of the SWP and CVP pumps in the south potentially altering salmon migratory patterns and contributing to the decline delta smelt. The new system would reduce the ongoing physical impact the southern diversion facilities and allow for greater operational flexibility. Minimizing south Delta pumping would provide more natural east-west clows diversions would also help protect critical water supplies against the earthquakes.⁵⁷

These two passages are about stopping thought, not informing it. improvements in potential downstream clow on Old and Middle River clows and clow reductions inherent in operating the north Delta north Delta intakes without threats to migrating juvenile salmon smolts times of year. If real-time operations are invoked to return operations pumping plants to protect fish in the north Delta, the projects Old and Middle rivers with attendant threats and stresses to fish hydrodynamic Delta in the absence of clogging most key channels at least, the Delta remains primarily a common water pool, and RDEIR/SDEIS or "California WaterFix" public can wish it away.

⁵⁶ RDEIR/SDEIS, Section 4.1, p. 4.1-1, lines 18-21.

⁵⁷ RDEIR/SDEIS, Section 4.1, p. 4.1-1, lines 38-41 and p. 4.1-2, line 11.

⁵⁸ We are aware of the annual installation of temporary barriers at water levels and at the head of Old River to steer migrating salmon Pumping Plant in the San Joaquin River mainstem.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

"However," the Lead Agencies state, in an effort to keep at the Tunnels Project, "habitat restoration is still recognized as a critical term plans for the Delta, and such endeavors will likely be separate and apart from the chosen."

At this writing, no additional documentation of the likelihood of California funded let alone implemented has been provided at the California juncture, CER is described as being less than one-fifth the size originally under BDCP as Conservation Measures in the new alternatives "restoration of habitat in the Delta... will instead occur through California activities will be further developed and evaluated independently of the

The RDEIR/SDEIS fails to make detailed comparisons among alternative direct comparison of the three BDCP and California Water Fix preferred comparison shows, first, that there are only minor differences between preferred alternative, and second, that to make this direct comparison different documents: the Bay Delta Conservation Concept, the RDEIR/SDEIS, and Engineering Report (dated July 2015), which was obtained only through No such comparison was provided that we could readily find in Table 1.

Last year, we noted that even BDCP's Draft EIR/EIS observed that among alternatives when it came to the operation of the Delta, the RDEIR/SDEIS fails to provide comparisons of Delta outflow and exports with all other alternatives, easily and directly gauge for themselves the relative differences among a comparison drawn from both the Draft EIR/EIS and the RDEIR/SDEIS illustrate the cumbersome complexity even of summarizing the "slight complexities associated with analyzing and grasping the BDCP's and points up the continuing deficiency of the RDEIR/SDEIS in fostering comparisons among its too numerous alternatives. All that is really

⁵⁹ California EcoRestore's initial goal is to advance (i.e. complete or break through) habitat restoration:

- 25,000 acres associated with existing mandates for habitat restoration, and opinions. These projects will be funded exclusively by the state and benefit from the State Water Project and the Central Valley Project
- 5,000 acres of habitat enhancements. Proposition 1 grants to local organizations, and other entities will support these habitat enhancements. Funding will come primarily from the Delta Conservation, the California Wildlife, and the California Department of Water Resources.

California EcoRestore is unassociated with any habitat restoration that may be construction and operation of new Delta water exports. <http://www.ecorestore.ca.gov/resources/>, 14 September 2015

There is no timeline, schedule of phasing or planning document for California EcoRestore represents DWR's cherry-picking of restoration projects it likes from "existing mandates" and which could be funded from the recently passed

⁶⁰ RDEIR/SDEIS, Section 4.1, p. 4.1-2, lines 15-17.

⁶¹ EWC <http://www.ecowater.org>, pp. 150-152.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

between the modified Alternative 4 and each of the three other shorn of the BDCP conservation strategy.

Table 1 Summary Comparing BDCP and California Water Fix Alternatives 2013 through 2015			
Feature Description/Surface Area	Alternative (2013)	Modified Alternative (2014)	Alternative ("California Water Fix")
Conveyance capacity (cfs)	9,000	9,000	9,000
Intake facilities (acres per site)	90	90	122
Six pumps per intake, pump	500		
Total dynamic head (feet)	59-73		
Tunnel 1a connecting intakes 2 and 3 to Intermediate Forebay			
Tunnel length (feet)	47,400	46,100	
Number of tunnel bores; number	1; 4	1; 3	
Tunnel finished inside diameter (feet)	20	28	
Tunnel 1b connecting Intake 5 to Intermediate Forebay			
Tunnel length (feet)	24,900	25,200	
Number of tunnel bores; number	1; 3	1; 3	
Tunnel finished inside diameter (feet)	20	28	
North Tunnels from Intake 2 to Intake 3 (Alternative 4A)			
Maximum Flow (Intake Flow, cfs)			3,000
Tunnel length (feet)			10,507
Number of Tunnel bores; number			1; 1
Tunnel Finished Inside Diameter (feet)			28
North Tunnels from Intake 3 to Intermediate Forebay (Alternative 4B)			
Maximum Flow (Intake Flow, cfs)			6,000
Tunnel length (feet)			35,587
Number of Tunnel bores; number			1; 3

⁶² RDEIR/SDEIS, Section 4.1, Tables 4.1-1, 4.1-4, and 4.1-6.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Table 1 Summary Comparing BDCP and California WaterFix Alternatives 2013 through 2015			
Feature Description/Surface Area	Alternative (2013)	Modified Alternative (2014)	Alternative ("California WaterFix")
Tunnel finished inside diameter			40
North Tunnel from Intake to Intermediate Forebay			
Maximum Flow (Intake Flow, cfs)			3,000
Tunnel length (feet)			25,186
Number of Tunnel bores; number			1; 3
Tunnel finished inside diameter			28
Intermediate Forebay (acres)	245	243	243
Water surface area (acres)	41	37	37
Active storage volume (acre-feet)	710	750	750
Main Tunnels (connecting Intermediate Forebay to Clifton Court Flume)			
Maximum Flow (cfs)	9,000	9,000	9,000
Tunnel length (feet)	159,000	159,000	159,000
Number of Tunnel bores; number	2; 9	2; 9	2; 9
Tunnel finished inside diameter	40	40	40
Clifton Court Pumping Plant			
Total Number of Pumps (both large and small)	None	12	12
8 large pumps, capacity per	None	1,125	1,125
4 small pumps, capacity per	None	563	563
Total dynamic head (feet)	None	37	37
Expanded Clifton Court Forebay area, acres)	2,950	2,600	1,691
Forebay dredging area (acres)	2,030	2,010	2,121
Expanded water surface area (acres)	690	590	806

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Table 1 Summary Comparing BDCP and California WaterFix Alternatives 2013 through 2015			
Feature Description/Surface Area	Alternative (2013)	Modified Alternative (2014)	Alternative ("California WaterFix")
Active storage volume (acre-feet)	9,260 (north cell), 8,111 (south cell)	4,300 (north cell), 10,200 (south cell)	4,970 (north cell), 12,000 (south cell)
Power requirements (Estimated electric load (MW))	50-60	36	36

Notes: cfs = cubic feet per second; MW = megawatts. Acre footprints of selected facilities. Characteristics of other areas include designated borrow, spoils, and reusable tunnel material (the Recirculated DEIR/SDEIS, 2015). Overall project acreage includes permanent access roads.

¹ Intake 3's tunnel to the Intermediate Forebay (IF) will have intake clows from Intakes 2 and 3 to the IF, a total

Sources: Bay Delta Conservation Plan, November 2013, Chapter 4, 4.4.1, 4.4.3, 4.4.11; BDCP Recirculated Draft EIR/Supplemental Conveyance Facility Modifications, February 2014, 3.2.1, 3.2.3; California Resources, Delta Habitat Conservation and Conveyance Facility Design Report, Conveyance Facility, Modified Pipeline/Tunnel Option—Clifton Forebay, July 2015, Table ES-1, pp. ES-4 to ES-5; Environmental

EWC's Plan Alternatives are reasonable alternatives EWC's demand for consideration of the Responsible Exports Plan and the Sustainable Water alternatives and reasonable variants. EWC's similar requests started back have to date been ignored in the BDCP and "California WaterFix

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Table 2

Scenario	Applies to Alternative(s)	North Delta Bypass & Diversions	South Delta Exports	Yolo Bypass Diversions	Delta Cross Channel	Rio Vista Instream Flows	Delta Inflow & Outflow
A	1A, 1B, 1C, 3	Dec - June (could) make use of initial and post-pulse operational criteria; July - Sep min bypass flows of 5,000 cfs; Oct - Nov min bypass flows increase to 7,000 cfs; diversions are to 6% of Sacramento flow at Freeport such that North Delta Bypass flows are \geq 5,000 cfs; initial pulse trigger; post-pulse operations using table 3-16 in EIS/EIR.	Biological Opinions' BPA actions, consistent longer # for OMR criteria; April-May-June OMR flows in Table 3-19; Oct - Nov: No South Delta exports during D-1641 pulse flows; after D-1641 pulse flows operate to 5,000 cfs through November.	Sacramento Weir: No changes; Lisbon Weir: No changes; Fremont Weir: 17.5 notch with operable gates between Dec 1 and April 30 exceeding Yolo Bypass inundation of 3,000 to 6,000 cfs.	Oct - Nov: DCC closed 15 days per month; Dec - June: DCC gates closed; Jul - Sep: DCC gates open.	Sep - Dec: D-1641	D-1641
B	2A, 2B, 2C	Same as Scenario A	Derived from BICPs - Compare Table 3-16 of EIR/EIS to MAA operational criteria, select longer # for OMR criteria; April-May-June OMR flows in Table 3-19; Oct - Nov: No South Delta exports during D-1641 pulse flows; after D-1641 pulse flows operate to 5,000 cfs through November.	Same as Scenario A	D-1641	D-1641	Dec - Aug: D-1641; Sep - Nov: Fall X2 from Delta smelt BCP in Wet and Above Normal Years
B	2D (2015)	Same as Scenario A	None - Fremont Weir not included.	None - Fremont Weir not included.	Same as Scenario B	Same as Scenario B	Operational Scenario B without Fremont Weir modifications, evaluated at Early Long Term (about 2023).
C	5	Same as Scenario A	Same as Scenario A; Exports/Inflow ratio limited in April and May.	Same as Scenario A	Same as Scenario A	Same as Scenario A	Same as Scenario B
C	5A (2015)	Same as Scenario A	Same as Scenario A; Exports/Inflow ratio limited in April and May.	None - Fremont Weir not included.	Same as Scenario A	Same as Scenario A	Operational Scenario C without Fremont Weir modifications, evaluated at Early Long Term (about 2023).
D	6A, 6B, 6C	Same as Scenario A	None	Same as Scenario A	Same as Scenario A	Same as Scenario A	Same as Scenario B
E	7	Scenario A does apply: Dec - June, Table 3-16 would apply closely, unlike in Scenario A. Initial pulses similar to Scenario A; Post-pulse operations handled by Table 3-16.	OMR flows \geq +1,000 cfs in Dec - Mar; OMR flows in June \geq +3,000 cfs; OMR flows in April, May and Oct - Nov would have no south Delta exports.	Sacramento and Lisbon Weirs same as in Scenario A; Fremont Weir same notch, operated to inundate Yolo Bypass with 3,000 to 8,000 cfs with duration governed by conditions in the Sacramento River.	Same as Scenario A	Sep - Dec: D-1641	Same as Scenario B
F	8	Same as Scenario E	Same as Scenario E	Sacramento and Lisbon Weirs same as in Scenario A; Fremont Weir same notch, operated to inundate Yolo Bypass with 3,000 to 8,000 cfs with duration set for 30-45 days.	Same as Scenario A	Same as Scenario A	Jan - June: outflow = 55% of UF at Freeport or D-1641; Sep - Oct - Nov: Fall X2 Feather River flows to be proportional amount of 55% of UF at Freeport
G	9	None	Similar to Scenario A; 1/3 ratio follows NMFS defined BO 2009.	Same as Scenario A	Flows $<$ 11,000 cfs, DCC or $>$ 25,000 cfs, DCC is closed; Flows $>$ 11,000 cfs and $<$ 25,000 cfs, DCC open to divert up to 25% of Sacramento River flow.	Same as Scenario A	Same as Scenario B
H	4 (2013)	Same as Scenario A	Derived from BICPs - Compare Table 3-21 of EIR/EIS to MAA operational criteria, select longer # for OMR criteria; April-May-June OMR flows in Table 3-22; A1	Same as Scenario A	Dec 14: NMFS BO 2009, consistent with No Action Alternative modelling	Same as Scenario A	Decision Tree Outcomes: H1 - spring and fall outflows as per D-1641; H2 - Spring outflow for Longfin smelt and Fall outflow from D-1641; H3 - Fall X2 outflows for Delta smelt and spring outflow from D-1641; H4 - Fall X2 for Delta smelt and Spring outflow for Longfin smelt
H	4 (2014, modified)	Same as Scenario A	Same as Scenario H	Same as Scenario A	Same as Scenario H	Same as Scenario A	Operational Scenarios H1-H4 with Decision Tree of Chapter 3, Section 3.6.4.2 of Draft EIR/EIS; evaluated at Late Long Term.
H	4A (2015)	Same as Scenario A	Same as Scenario H	None - Fremont Weir not included.	Same as Scenario H	Same as Scenario A	Operational Scenario H3* (a new operational scenario which includes a criteria for spring outflow bounded by the criteria associated with Scenarios H3 and H4 of Chapter 3, Section 3.6.4.2 of Draft EIR/EIS; evaluated as Scenarios H3 and H4 at early long-term, around 2025).

Source: Bay Delta Conservation Plan Draft EIR/EIS, November 2013, Chapter 3, pp. 181-202; NMFS/EIS, Section 4.1.1, 4.1.4, and 4.1.6.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Deliberate ⁶³ *BDCP* *Refusal* *to* *Consider* *Alternatives* *In* *the* *Big* *Delta* *Flow* of *alternatives* *reducing* *exports* *and* *increasing* *clows* *has* *been* *deliberately* *refusing* *to* *develop* *and* *evaluate* *a* *reasonable* *range* *of* *alternatives* *at* *all*, *that* *would* *increase* *clows* *by* *reducing* *exports*. *Academy* *of* *Sciences* *declared* *in* *reviewing* *the* *then-current* *version* “[c]hoosing *the* *alternative* *project* *before* *evaluating* *alternative* *ways* *to* *would* *be* *post* *hoc* *rationalization—in* *other* *words*, *putting* *the* *cart* *before* *the* *horses* *is* *not* *considering* *alternative* *actions* *are* *not* *presented* *in* *the* *Delta* *clows* *is* *to* *take* *less* *water* *out*.

Reclamation *and* *DWR* *must* *develop* *and* *evaluate* *alternative* *ways* *to* *increase* *clows* *reducing* *exports* *in* *order* *to* *satisfy* *federal* *and* *California* *law*. *The* *policy* *of* *the* *State* *of* *California* *is* *the* *to* *supply* *through* *a* *statewide* *strategy* *of* *investing* *in* *improved* *conservation*, *and* *water* *use*. *The* *Act* *also* *mandates* *that* *the* *BDCP* *comprehensive* *review* *and* *analysis* *of* *“A* *reasonable* *range* *of* *clows* *other* *operational* *criteria* *necessary* *for* *recovering* *the* *Delta* *under* *a* *reasonable* *range* *of* *hydrologic* *conditions*, *which* *will* *identify* *available* *for* *export* *and* *other* *non* *agricultural* *use*. *Act* *requires*: *“A* *reasonable* *conveyance* *alternatives*, *including* *through-Delta,”* *has* *well* *as* *new* *dual* *alternatives*.⁶⁹ *In* *addition*, *the* *Act* *mandates* *that* *“The* *long-standing* *reasonable* *use* *and* *the* *public* *trust* *doctrine* *shall* *be* *the* *foundational* *policy* *and* *are* *particularly* *important* *and* *applicable* *to* *the* *Delta.”*

Reclamation *and* *DWR* *have* *now* *marched* *along* *for* *over* *four* *years* *deliberately* *refusing* *to* *develop* *and* *evaluate* *a* *reasonable* *range* *of* *alternatives* *at* *all*, *that* *would* *increase* *clows* *by* *reducing* *exports*. *Academy* *of* *Sciences* *declared* *in* *reviewing* *the* *then-current* *version* “[c]hoosing *the* *alternative* *project* *before* *evaluating* *alternative* *ways* *to* *would* *be* *post* *hoc* *rationalization—in* *other* *words*, *putting* *the* *cart* *before* *the* *horses* *is* *not* *considering* *alternative* *actions* *are* *not* *presented* *in* *the* *Delta* *clows* *is* *to* *take* *less* *water* *out*.

⁶³ *BDCP* *Draft* *EIR/EIS*, *Executive* *Summary*, *p.* *ES-10*.

⁶⁴ *D/EIR/SDEIS*, *Section* *11.1*, *p.*

⁶⁵ *D/EIR/EIS*, *Executive* *Summary*, *Section* *11.1*, *p.* *ES-6*.

⁶⁶ *D/EIR/SDEIS*, *Executive* *Summary*, *p.* *ES-1*.

⁶⁷ *Cal. Reg.* *Water* *Code* *§* *85021*. *Emphasis* *added*.

⁶⁸ *Cal. Reg.* *Water* *Code* *§* *85320(b)(2)(A)*.

⁶⁹ *Cal. Reg.* *Water* *Code* *§* *85320(b)(2)(B)*.

⁷⁰ *Cal. Reg.* *Water* *Code* *§* *85023*.

⁷¹ *National* *Academy* *of* *Sciences*, *Report* *in* *Brief* *at* *p.* *2*, *May* *5*, *20*

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

More than three years ago, on April 16, 2012, the Co-Facilitator then-Deputy Secretary of the California Natural Resources Agency General EWC's concerns with BDCP's current approach and direction of the treatment of alternative letter specifically states:

The absence of a full range of alternatives which would reduce Delta. It is understandable that the exporters, who are driving the alternative; however, in order to be a truly permissible project, alternatives, including ones that would reduce exports, needs to be included public trust balancing for alternatives.

The EWC provided its "Reduced Exports Plan" to BDCP agency on again in person on February 20, 2013. Then-EWC Co-Facilitator on December 2012 message to Deputy Secretary Meral that:

Now that the project is nearing its EIR/EIS stage, we feel it is Exports Plan] to you and request that you get it on the record know, CEQA and NEPA both require a full range of reasonable alternatives. 2012 email DiCroce to Meral).

On November 18, 2013, FOR submitted a comment letter in the out the BDCP to review the "Responsible Exports Plan," an update Plan" proposed by the EWC: as an alternative to the preferred reducing exports from the Delta, implementing stringent conservation upstream conveyance. This Plan additionally prioritizes the need for and protection of public trust resources rather than a mere controlled the Delta into these dire circumstances. Only that alternative statements indicating that more outflow is needed to protect aquatic populations. The EWC Responsible Exports Plan is feasible and therefore should be fully analyzed in a Draft EIS/EIR.

All of the so-called project alternatives set forth in the Draft SDEIS create a capacity to divert more water from the Delta diversion, which will undoubtedly decimate Delta-reliant species already including the Delta smelt, chinook salmon, steelhead, San Joaquin kit among dozens of others. The Draft EIR/EIS itself describes difference "slight." Should the Tunnels Project be completed, this critical aquatic exported through the north Delta intakes along the lower Sacramento contrary to ESA Section 10 (prohibiting reduction of the likelihood species), ESA Section 7 (prohibiting federal agency actions that are continued existence of any endangered species or that "result in modification of [critical] habitat of [listed] species" 16 U.S.C. § 1 Code Section 85021 (requiring that exporters reduce reliance on the

BDCP Agencies Must Consider Alternatives That Will Increase Delta the Responsible Exports Plan. (again request development of a reasonable alternatives that increasing Delta clows while reducing exports. Tunnels

⁷² Lett, p. 1.

⁷³ Lett, p. 2.

⁷⁴ FOR November 18, 2013 comment letter at p. 3, Attachment 4 to

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

prepare a new, legally sufficient, Draft EIR/EIS that incorporates a Responsible Exports Plan (attached to our previous comment letters) www.ewccalifornia.org/reports/responsibleexportsplanmay2013.pdf.⁷⁵

EWC-type alternatives could vary by how much time is allotted time. For instance, they could range from 10 to 40 years, with a range of timelines provided for Tunnels construction.

The RDEIR/SDEIS admits the existence of paper water, “quantities to average annual unimpaired clows in the Delta watershed could be face value of water permits. The head BDCP agencies misuse the Delta definition of the “Consequential Goals” means the two goals of providing water supply for California and protecting, restoring, and enhancing Providing a “more reliable water supply” means real water actually reflecting water available for export while meeting the needs for freshwater clows, fisheries, public trust obligations, the ESA, the Clear rights holders. It does not mean moving the exporters who are including 1.3 million acres of drainage impaired lands—to the front and everything else. It also does not mean putting the exporters lengthy extreme drought, crashing fish populations, and reductions in millions of Californians.

The estimated \$15 billion cost of the Tunnels Project—which will or more including debt service and inevitable cost over-runs represents only true benefit cost study prepared on the Tunnels Project times higher than the benefits the project has dropped the feature conservation, the exporters would not have the benefit of 50 years water deliveries. That change, in addition to worsening the adverse Tunnels Project, also worsens the already negative cost benefit ratio change also leaves the taxpayer public to be stuck with all the Tunnels Project.

BDCP Agencies Should Examine an Instream Water Rights Program, yet unexamined, path forward lies in use of a comprehensive, in protects ecosystems and species as a reasonable alternative. If water system by which water is allocated, then a reasonable alternative ethics of our integration with our environment: legal water rights

⁷⁵ We for attached comments@icci.com address copy of AEW Sustainable Water Plan for California (May 2015) update. The BDCP California Water Fix Delta features of the new plan are similar in pertinent part to the previous recommendations and features set forth above. We also attach a letter and federal officials about alternatives issues this past summer.

⁷⁶ DEIR/SDEIS, Section 11, p. 1-11. The RDEIR/SDEIS refers to the State memorandum we cited earlier on Delta watershed water rights, and tries “However, the hydrology, the SWP and CVP water contracts, and environmental quantities that could be made available for use and diversion.”

⁷⁷ Cal. Reg. Code § 85054.

⁷⁸ See Jeffrey B. Mitchell, *Cost Analysis of the Delta Water and Environmental Business*, University of the Pacific, July 12, 2012.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

allocated, and enforced to support water needs for healthy aquatic California. The alternatives analysis of the Draft EIR/EIS and the consideration of this important legal and policy avenue. Alternatives methods of accomplishing the ⁷⁹harmless ⁸⁰incidental ⁸¹action of Delta habitat and species and a reliable water supply for California—must be without the area of the agency's expertise and regulatory control.

Formalizing and effectuating water rights for ecosystems will ensure are considered up front, that planning is effective, and that enforcement are clear. California is undertaking various processes now policy for decades. These must include consideration of water rights; mutual well-being of the state's people and environment.

Strategies for "cinding" water in such an alternative could include: unreasonable use provisions of the state Constitution (2) fees non-diversions to encourage voluntary; (3) public trust violations; (4) conducting initiatives to convince existing all or a portion of their water rights voluntarily; (5) adjudicating rights; and (6) other specific approaches to acquiring water rights to instream ⁸²successful, instream water rights program in ensure that we can meet the water needs of both humans a long term.

The RDEIR/SDEIS must meaningfully present and evaluate alternatives .lows in order to comply with NEPA Regs. and CEQA. [alternatives] section is the heart of the environmental impact statement." The "sharply" decline the issues and provide a clear basis for choice

⁷⁹ Environmental Defense Fund v. Corps of Engineers, 492 F.2d 646 (9th Cir. 1974), cert. denied, 419 U.S. 974 (1974); 40 C.F.R. § 1502.14(c).

⁸⁰ 40 C.F.R. § 1502.14(c). Again, legislative action (such as that which program of instream water rights) "does not automatically justify ⁸¹of Sausalito, 336 F.3d 1186, 1208 (9th Cir. 2004); ⁸²Regional Forester, 833 F.2d 810, 815 (9th Cir. 1987); ⁸³Valley Citizens, 490 F.2d 1149 (9th Cir. 1974); ⁸⁴Ruckelshaus, 738 F.2d 1448, 1454 (9th Cir. 1984) ("In some cases an therefore required by NEPA to be discussed in the EIS, even though effect").

⁸¹ See CA Water Code, § 170000, and § 170001.

⁸² Oregon's Instream Water Rights Act (IWRA) recognizes a broad array (O.R.S. §§ 537.332-537.334) (recognizing that public uses that are maintenance and enhancement of aquatic and fish life, wildlife, fish and ecological values"). The IWRA converted minimum low requirements to instream Minimum Perennial Streamflow Act to instream water rights. O.R.S. § 537.3 system to convert water rights to instream uses (O.R.S. § 537.348). No water rights for waterways throughout Oregon, but it also began to create which conservation groups, regional land trusts, state agencies and other health. See Janet ⁸³ ⁸⁴ ⁸⁵ ⁸⁶ ⁸⁷ ⁸⁸ ⁸⁹ ⁹⁰ ⁹¹ ⁹² ⁹³ ⁹⁴ ⁹⁵ ⁹⁶ ⁹⁷ ⁹⁸ ⁹⁹ ¹⁰⁰ ¹⁰¹ ¹⁰² ¹⁰³ ¹⁰⁴ ¹⁰⁵ ¹⁰⁶ ¹⁰⁷ ¹⁰⁸ ¹⁰⁹ ¹¹⁰ ¹¹¹ ¹¹² ¹¹³ ¹¹⁴ ¹¹⁵ ¹¹⁶ ¹¹⁷ ¹¹⁸ ¹¹⁹ ¹²⁰ ¹²¹ ¹²² ¹²³ ¹²⁴ ¹²⁵ ¹²⁶ ¹²⁷ ¹²⁸ ¹²⁹ ¹³⁰ ¹³¹ ¹³² ¹³³ ¹³⁴ ¹³⁵ ¹³⁶ ¹³⁷ ¹³⁸ ¹³⁹ ¹⁴⁰ ¹⁴¹ ¹⁴² ¹⁴³ ¹⁴⁴ ¹⁴⁵ ¹⁴⁶ ¹⁴⁷ ¹⁴⁸ ¹⁴⁹ ¹⁵⁰ ¹⁵¹ ¹⁵² ¹⁵³ ¹⁵⁴ ¹⁵⁵ ¹⁵⁶ ¹⁵⁷ ¹⁵⁸ ¹⁵⁹ ¹⁶⁰ ¹⁶¹ ¹⁶² ¹⁶³ ¹⁶⁴ ¹⁶⁵ ¹⁶⁶ ¹⁶⁷ ¹⁶⁸ ¹⁶⁹ ¹⁷⁰ ¹⁷¹ ¹⁷² ¹⁷³ ¹⁷⁴ ¹⁷⁵ ¹⁷⁶ ¹⁷⁷ ¹⁷⁸ ¹⁷⁹ ¹⁸⁰ ¹⁸¹ ¹⁸² ¹⁸³ ¹⁸⁴ ¹⁸⁵ ¹⁸⁶ ¹⁸⁷ ¹⁸⁸ ¹⁸⁹ ¹⁹⁰ ¹⁹¹ ¹⁹² ¹⁹³ ¹⁹⁴ ¹⁹⁵ ¹⁹⁶ ¹⁹⁷ ¹⁹⁸ ¹⁹⁹ ²⁰⁰ ²⁰¹ ²⁰² ²⁰³ ²⁰⁴ ²⁰⁵ ²⁰⁶ ²⁰⁷ ²⁰⁸ ²⁰⁹ ²¹⁰ ²¹¹ ²¹² ²¹³ ²¹⁴ ²¹⁵ ²¹⁶ ²¹⁷ ²¹⁸ ²¹⁹ ²²⁰ ²²¹ ²²² ²²³ ²²⁴ ²²⁵ ²²⁶ ²²⁷ ²²⁸ ²²⁹ ²³⁰ ²³¹ ²³² ²³³ ²³⁴ ²³⁵ ²³⁶ ²³⁷ ²³⁸ ²³⁹ ²⁴⁰ ²⁴¹ ²⁴² ²⁴³ ²⁴⁴ ²⁴⁵ ²⁴⁶ ²⁴⁷ ²⁴⁸ ²⁴⁹ ²⁵⁰ ²⁵¹ ²⁵² ²⁵³ ²⁵⁴ ²⁵⁵ ²⁵⁶ ²⁵⁷ ²⁵⁸ ²⁵⁹ ²⁶⁰ ²⁶¹ ²⁶² ²⁶³ ²⁶⁴ ²⁶⁵ ²⁶⁶ ²⁶⁷ ²⁶⁸ ²⁶⁹ ²⁷⁰ ²⁷¹ ²⁷² ²⁷³ ²⁷⁴ ²⁷⁵ ²⁷⁶ ²⁷⁷ ²⁷⁸ ²⁷⁹ ²⁸⁰ ²⁸¹ ²⁸² ²⁸³ ²⁸⁴ ²⁸⁵ ²⁸⁶ ²⁸⁷ ²⁸⁸ ²⁸⁹ ²⁹⁰ ²⁹¹ ²⁹² ²⁹³ ²⁹⁴ ²⁹⁵ ²⁹⁶ ²⁹⁷ ²⁹⁸ ²⁹⁹ ³⁰⁰ ³⁰¹ ³⁰² ³⁰³ ³⁰⁴ ³⁰⁵ ³⁰⁶ ³⁰⁷ ³⁰⁸ ³⁰⁹ ³¹⁰ ³¹¹ ³¹² ³¹³ ³¹⁴ ³¹⁵ ³¹⁶ ³¹⁷ ³¹⁸ ³¹⁹ ³²⁰ ³²¹ ³²² ³²³ ³²⁴ ³²⁵ ³²⁶ ³²⁷ ³²⁸ ³²⁹ ³³⁰ ³³¹ ³³² ³³³ ³³⁴ ³³⁵ ³³⁶ ³³⁷ ³³⁸ ³³⁹ ³⁴⁰ ³⁴¹ ³⁴² ³⁴³ ³⁴⁴ ³⁴⁵ ³⁴⁶ ³⁴⁷ ³⁴⁸ ³⁴⁹ ³⁵⁰ ³⁵¹ ³⁵² ³⁵³ ³⁵⁴ ³⁵⁵ ³⁵⁶ ³⁵⁷ ³⁵⁸ ³⁵⁹ ³⁶⁰ ³⁶¹ ³⁶² ³⁶³ ³⁶⁴ ³⁶⁵ ³⁶⁶ ³⁶⁷ ³⁶⁸ ³⁶⁹ ³⁷⁰ ³⁷¹ ³⁷² ³⁷³ ³⁷⁴ ³⁷⁵ ³⁷⁶ ³⁷⁷ ³⁷⁸ ³⁷⁹ ³⁸⁰ ³⁸¹ ³⁸² ³⁸³ ³⁸⁴ ³⁸⁵ ³⁸⁶ ³⁸⁷ ³⁸⁸ ³⁸⁹ ³⁹⁰ ³⁹¹ ³⁹² ³⁹³ ³⁹⁴ ³⁹⁵ ³⁹⁶ ³⁹⁷ ³⁹⁸ ³⁹⁹ ⁴⁰⁰ ⁴⁰¹ ⁴⁰² ⁴⁰³ ⁴⁰⁴ ⁴⁰⁵ ⁴⁰⁶ ⁴⁰⁷ ⁴⁰⁸ ⁴⁰⁹ ⁴¹⁰ ⁴¹¹ ⁴¹² ⁴¹³ ⁴¹⁴ ⁴¹⁵ ⁴¹⁶ ⁴¹⁷ ⁴¹⁸ ⁴¹⁹ ⁴²⁰ ⁴²¹ ⁴²² ⁴²³ ⁴²⁴ ⁴²⁵ ⁴²⁶ ⁴²⁷ ⁴²⁸ ⁴²⁹ ⁴³⁰ ⁴³¹ ⁴³² ⁴³³ ⁴³⁴ ⁴³⁵ ⁴³⁶ ⁴³⁷ ⁴³⁸ ⁴³⁹ ⁴⁴⁰ ⁴⁴¹ ⁴⁴² ⁴⁴³ ⁴⁴⁴ ⁴⁴⁵ ⁴⁴⁶ ⁴⁴⁷ ⁴⁴⁸ ⁴⁴⁹ ⁴⁵⁰ ⁴⁵¹ ⁴⁵² ⁴⁵³ ⁴⁵⁴ ⁴⁵⁵ ⁴⁵⁶ ⁴⁵⁷ ⁴⁵⁸ ⁴⁵⁹ ⁴⁶⁰ ⁴⁶¹ ⁴⁶² ⁴⁶³ ⁴⁶⁴ ⁴⁶⁵ ⁴⁶⁶ ⁴⁶⁷ ⁴⁶⁸ ⁴⁶⁹ ⁴⁷⁰ ⁴⁷¹ ⁴⁷² ⁴⁷³ ⁴⁷⁴ ⁴⁷⁵ ⁴⁷⁶ ⁴⁷⁷ ⁴⁷⁸ ⁴⁷⁹ ⁴⁸⁰ ⁴⁸¹ ⁴⁸² ⁴⁸³ ⁴⁸⁴ ⁴⁸⁵ ⁴⁸⁶ ⁴⁸⁷ ⁴⁸⁸ ⁴⁸⁹ ⁴⁹⁰ ⁴⁹¹ ⁴⁹² ⁴⁹³ ⁴⁹⁴ ⁴⁹⁵ ⁴⁹⁶ ⁴⁹⁷ ⁴⁹⁸ ⁴⁹⁹ ⁵⁰⁰ ⁵⁰¹ ⁵⁰² ⁵⁰³ ⁵⁰⁴ ⁵⁰⁵ ⁵⁰⁶ ⁵⁰⁷ ⁵⁰⁸ ⁵⁰⁹ ⁵¹⁰ ⁵¹¹ ⁵¹² ⁵¹³ ⁵¹⁴ ⁵¹⁵ ⁵¹⁶ ⁵¹⁷ ⁵¹⁸ ⁵¹⁹ ⁵²⁰ ⁵²¹ ⁵²² ⁵²³ ⁵²⁴ ⁵²⁵ ⁵²⁶ ⁵²⁷ ⁵²⁸ ⁵²⁹ ⁵³⁰ ⁵³¹ ⁵³² ⁵³³ ⁵³⁴ ⁵³⁵ ⁵³⁶ ⁵³⁷ ⁵³⁸ ⁵³⁹ ⁵⁴⁰ ⁵⁴¹ ⁵⁴² ⁵⁴³ ⁵⁴⁴ ⁵⁴⁵ ⁵⁴⁶ ⁵⁴⁷ ⁵⁴⁸ ⁵⁴⁹ ⁵⁵⁰ ⁵⁵¹ ⁵⁵² ⁵⁵³ ⁵⁵⁴ ⁵⁵⁵ ⁵⁵⁶ ⁵⁵⁷ ⁵⁵⁸ ⁵⁵⁹ ⁵⁶⁰ ⁵⁶¹ ⁵⁶² ⁵⁶³ ⁵⁶⁴ ⁵⁶⁵ ⁵⁶⁶ ⁵⁶⁷ ⁵⁶⁸ ⁵⁶⁹ ⁵⁷⁰ ⁵⁷¹ ⁵⁷² ⁵⁷³ ⁵⁷⁴ ⁵⁷⁵ ⁵⁷⁶ ⁵⁷⁷ ⁵⁷⁸ ⁵⁷⁹ ⁵⁸⁰ ⁵⁸¹ ⁵⁸² ⁵⁸³ ⁵⁸⁴ ⁵⁸⁵ ⁵⁸⁶ ⁵⁸⁷ ⁵⁸⁸ ⁵⁸⁹ ⁵⁹⁰ ⁵⁹¹ ⁵⁹² ⁵⁹³ ⁵⁹⁴ ⁵⁹⁵ ⁵⁹⁶ ⁵⁹⁷ ⁵⁹⁸ ⁵⁹⁹ ⁶⁰⁰ ⁶⁰¹ ⁶⁰² ⁶⁰³ ⁶⁰⁴ ⁶⁰⁵ ⁶⁰⁶ ⁶⁰⁷ ⁶⁰⁸ ⁶⁰⁹ ⁶¹⁰ ⁶¹¹ ⁶¹² ⁶¹³ ⁶¹⁴ ⁶¹⁵ ⁶¹⁶ ⁶¹⁷ ⁶¹⁸ ⁶¹⁹ ⁶²⁰ ⁶²¹ ⁶²² ⁶²³ ⁶²⁴ ⁶²⁵ ⁶²⁶ ⁶²⁷ ⁶²⁸ ⁶²⁹ ⁶³⁰ ⁶³¹ ⁶³² ⁶³³ ⁶³⁴ ⁶³⁵ ⁶³⁶ ⁶³⁷ ⁶³⁸ ⁶³⁹ ⁶⁴⁰ ⁶⁴¹ ⁶⁴² ⁶⁴³ ⁶⁴⁴ ⁶⁴⁵ ⁶⁴⁶ ⁶⁴⁷ ⁶⁴⁸ ⁶⁴⁹ ⁶⁵⁰ ⁶⁵¹ ⁶⁵² ⁶⁵³ ⁶⁵⁴ ⁶⁵⁵ ⁶⁵⁶ ⁶⁵⁷ ⁶⁵⁸ ⁶⁵⁹ ⁶⁶⁰ ⁶⁶¹ ⁶⁶² ⁶⁶³ ⁶⁶⁴ ⁶⁶⁵ ⁶⁶⁶ ⁶⁶⁷ ⁶⁶⁸ ⁶⁶⁹ ⁶⁷⁰ ⁶⁷¹ ⁶⁷² ⁶⁷³ ⁶⁷⁴ ⁶⁷⁵ ⁶⁷⁶ ⁶⁷⁷ ⁶⁷⁸ ⁶⁷⁹ ⁶⁸⁰ ⁶⁸¹ ⁶⁸² ⁶⁸³ ⁶⁸⁴ ⁶⁸⁵ ⁶⁸⁶ ⁶⁸⁷ ⁶⁸⁸ ⁶⁸⁹ ⁶⁹⁰ ⁶⁹¹ ⁶⁹² ⁶⁹³ ⁶⁹⁴ ⁶⁹⁵ ⁶⁹⁶ ⁶⁹⁷ ⁶⁹⁸ ⁶⁹⁹ ⁷⁰⁰ ⁷⁰¹ ⁷⁰² ⁷⁰³ ⁷⁰⁴ ⁷⁰⁵ ⁷⁰⁶ ⁷⁰⁷ ⁷⁰⁸ ⁷⁰⁹ ⁷¹⁰ ⁷¹¹ ⁷¹² ⁷¹³ ⁷¹⁴ ⁷¹⁵ ⁷¹⁶ ⁷¹⁷ ⁷¹⁸ ⁷¹⁹ ⁷²⁰ ⁷²¹ ⁷²² ⁷²³ ⁷²⁴ ⁷²⁵ ⁷²⁶ ⁷²⁷ ⁷²⁸ ⁷²⁹ ⁷³⁰ ⁷³¹ ⁷³² ⁷³³ ⁷³⁴ ⁷³⁵ ⁷³⁶ ⁷³⁷ ⁷³⁸ ⁷³⁹ ⁷⁴⁰ ⁷⁴¹ ⁷⁴² ⁷⁴³ ⁷⁴⁴ ⁷⁴⁵ ⁷⁴⁶ ⁷⁴⁷ ⁷⁴⁸ ⁷⁴⁹ ⁷⁵⁰ ⁷⁵¹ ⁷⁵² ⁷⁵³ ⁷⁵⁴ ⁷⁵⁵ ⁷⁵⁶ ⁷⁵⁷ ⁷⁵⁸ ⁷⁵⁹ ⁷⁶⁰ ⁷⁶¹ ⁷⁶² ⁷⁶³ ⁷⁶⁴ ⁷⁶⁵ ⁷⁶⁶ ⁷⁶⁷ ⁷⁶⁸ ⁷⁶⁹ ⁷⁷⁰ ⁷⁷¹ ⁷⁷² ⁷⁷³ ⁷⁷⁴ ⁷⁷⁵ ⁷⁷⁶ ⁷⁷⁷ ⁷⁷⁸ ⁷⁷⁹ ⁷⁸⁰ ⁷⁸¹ ⁷⁸² ⁷⁸³ ⁷⁸⁴ ⁷⁸⁵ ⁷⁸⁶ ⁷⁸⁷ ⁷⁸⁸ ⁷⁸⁹ ⁷⁹⁰ ⁷⁹¹ ⁷⁹² ⁷⁹³ ⁷⁹⁴ ⁷⁹⁵ ⁷⁹⁶ ⁷⁹⁷ ⁷⁹⁸ ⁷⁹⁹ ⁸⁰⁰ ⁸⁰¹ ⁸⁰² ⁸⁰³ ⁸⁰⁴ ⁸⁰⁵ ⁸⁰⁶ ⁸⁰⁷ ⁸⁰⁸ ⁸⁰⁹ ⁸¹⁰ ⁸¹¹ ⁸¹² ⁸¹³ ⁸¹⁴ ⁸¹⁵ ⁸¹⁶ ⁸¹⁷ ⁸¹⁸ ⁸¹⁹ ⁸²⁰ ⁸²¹ ⁸²² ⁸²³ ⁸²⁴ ⁸²⁵ ⁸²⁶ ⁸²⁷ ⁸²⁸ ⁸²⁹ ⁸³⁰ ⁸³¹ ⁸³² ⁸³³ ⁸³⁴ ⁸³⁵ ⁸³⁶ ⁸³⁷ ⁸³⁸ ⁸³⁹ ⁸⁴⁰ ⁸⁴¹ ⁸⁴² ⁸⁴³ ⁸⁴⁴ ⁸⁴⁵ ⁸⁴⁶ ⁸⁴⁷ ⁸⁴⁸ ⁸⁴⁹ ⁸⁵⁰ ⁸⁵¹ ⁸⁵² ⁸⁵³ ⁸⁵⁴ ⁸⁵⁵ ⁸⁵⁶ ⁸⁵⁷ ⁸⁵⁸ ⁸⁵⁹ ⁸⁶⁰ ⁸⁶¹ ⁸⁶² ⁸⁶³ ⁸⁶⁴ ⁸⁶⁵ ⁸⁶⁶ ⁸⁶⁷ ⁸⁶⁸ ⁸⁶⁹ ⁸⁷⁰ ⁸⁷¹ ⁸⁷² ⁸⁷³ ⁸⁷⁴ ⁸⁷⁵ ⁸⁷⁶ ⁸⁷⁷ ⁸⁷⁸ ⁸⁷⁹ ⁸⁸⁰ ⁸⁸¹ ⁸⁸² ⁸⁸³ ⁸⁸⁴ ⁸⁸⁵ ⁸⁸⁶ ⁸⁸⁷ ⁸⁸⁸ ⁸⁸⁹ ⁸⁹⁰ ⁸⁹¹ ⁸⁹² ⁸⁹³ ⁸⁹⁴ ⁸⁹⁵ ⁸⁹⁶ ⁸⁹⁷ ⁸⁹⁸ ⁸⁹⁹ ⁹⁰⁰ ⁹⁰¹ ⁹⁰² ⁹⁰³ ⁹⁰⁴ ⁹⁰⁵ ⁹⁰⁶ ⁹⁰⁷ ⁹⁰⁸ ⁹⁰⁹ ⁹¹⁰ ⁹¹¹ ⁹¹² ⁹¹³ ⁹¹⁴ ⁹¹⁵ ⁹¹⁶ ⁹¹⁷ ⁹¹⁸ ⁹¹⁹ ⁹²⁰ ⁹²¹ ⁹²² ⁹²³ ⁹²⁴ ⁹²⁵ ⁹²⁶ ⁹²⁷ ⁹²⁸ ⁹²⁹ ⁹³⁰ ⁹³¹ ⁹³² ⁹³³ ⁹³⁴ ⁹³⁵ ⁹³⁶ ⁹³⁷ ⁹³⁸ ⁹³⁹ ⁹⁴⁰ ⁹⁴¹ ⁹⁴² ⁹⁴³ ⁹⁴⁴ ⁹⁴⁵ ⁹⁴⁶ ⁹⁴⁷ ⁹⁴⁸ ⁹⁴⁹ ⁹⁵⁰ ⁹⁵¹ ⁹⁵² ⁹⁵³ ⁹⁵⁴ ⁹⁵⁵ ⁹⁵⁶ ⁹⁵⁷ ⁹⁵⁸ ⁹⁵⁹ ⁹⁶⁰ ⁹⁶¹ ⁹⁶² ⁹⁶³ ⁹⁶⁴ ⁹⁶⁵ ⁹⁶⁶ ⁹⁶⁷ ⁹⁶⁸ ⁹⁶⁹ ⁹⁷⁰ ⁹⁷¹ ⁹⁷² ⁹⁷³ ⁹⁷⁴ ⁹⁷⁵ ⁹⁷⁶ ⁹⁷⁷ ⁹⁷⁸ ⁹⁷⁹ ⁹⁸⁰ ⁹⁸¹ ⁹⁸² ⁹⁸³ ⁹⁸⁴ ⁹⁸⁵ ⁹⁸⁶ ⁹⁸⁷ ⁹⁸⁸ ⁹⁸⁹ ⁹⁹⁰ ⁹⁹¹ ⁹⁹² ⁹⁹³ ⁹⁹⁴ ⁹⁹⁵ ⁹⁹⁶ ⁹⁹⁷ ⁹⁹⁸ ⁹⁹⁹ ¹⁰⁰⁰

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

maker and the publisher, if a draft statement is so inadequate analysis, the agency shall prepare and circulate a revised draft. The agency shall make every effort to disclose and discuss at appropriate major points of view on the environmental impacts of the action.⁶⁴ The EWC's plans and an instream flow variant must be recirculated EIR/EIS that helps to disclose, sharpen and clarify the

Reclamation and DWR have failed to produce an alternatives analysis and provides a clear basis for choice among options as C.F.R. § 1502.14. The choice presented must include increasing flows reducing flows by increasing the capacity of the ~~Delta~~ ~~projects~~ ~~has~~ ~~called~~ "alternatives" presented in the BDCP Draft Plan, the Draft EIR/EIS, and

The failure to include a reasonable range of alternatives also violates reasonable range of alternatives to the project. The project which we objectives of the project but would avoid or substantially lessen the project, and evaluate the comparative merits of the alternatives. The shall focus on alternatives to the project or its location which substantially lessening any significant effects of the project, even if to some degree the attainment of the project objectives for two a new Draft EIR/EIS will be required by CEQA Guidelines section Responsible Exports Plan alternative and other alternatives that would exports have not been previously analyzed but must be analyzed alternatives.

⁶³ 40 C.F.R. § 1502.14.

⁶⁴ § 1502.9(a).

⁶⁵ The EIS alternatives section is to "Rigorously explore and objectively and for alternatives which were eliminated from detailed study, briefly discussed been eliminated." § 1502.14(a).

⁶⁶ *California v. F.W.P.A.*, 773 P.2d 719, 719 (1982), the project at issue involved wilderness, non-wilderness or future planning, remaining roadless areas in national United States. The court held that the EIS failed to pass muster under alternative of increasing timber production on federally owned lands currently because of failure to allocate to wilderness a share of the subject between 34% and 100%. 690 F.2d at 766. Like the situation here involved between water exports and Delta restoration (RDEIR/SDEIS § 4-6), involved a trade-off between wilderness use and development. This trade-off made without examining whether it can be softened or eliminated by from already developed areas." 690 F.2d at 767. Here, likewise, trade-offs without examining whether the impacts of alternatives reducing exports can increasing water conservation, recycling, and eventually retiring drainage-impaired areas of the exporters. *Adrian v. Oregon Council on Natural Desert Assn. v. Bureau of* 625 F.3d 1092, 1122 (2010) (EIS uncritical alternatives analysis privileging over another violated NEPA). Here, the BDCP alternatives analysis has unla over protection of Delta water quality, water quantity, public trust values,

⁶⁷ 4 Cal. Regs. (CEQA Guidelines) § 15126.6(a).

⁶⁸ § 15126.6(b).

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

In short, the fundamental flaws in the alternatives sections in the BDCP plan and the RDEIR/SDEIS have led to NEPA and basically inadequate and conclusory in nature that meaningful public participation is precluded.⁸⁹

Expert Federal and California Agencies have also Found the Current Analysis Deficient. On August 26, 2014, the U.S. Environmental Protection Agency's 40-page review of the Draft BDCP EIS finding in BDCP's case

operating any of the proposed conveyance facilities. We would continue to violate water quality standards in the Delta, set under the Clean Water Act (CWA) and chloride concentrations. We recommend that the Supplemental Draft EIS or more alternatives that would, instead, facilitate attainment of all Delta water quality objectives. Specifically, we recommend that an alternative be developed that would contribute to an increase in the magnitude or frequency of exceedances that would address the need for water availability and greater freshwater availability should result in a decrease in the state and federal water quality objectives in the Delta.

EPA further stated that “Data and other information provided in [Tunnels project] alternatives may contribute to declining populations of green sturgeon, and winter-run, spring-run, and fall-run steelhead. We recommend that the Supplemental Draft EIS [now the RDEIR/SDEIS] freshwater flow that can meet the needs of those [declining] fishery resources, and is supported by the best available science. We recommend the demonstrated significant correlations between freshwater flow and fishery resources.” “Other reasonable alternatives could be developed by incorporating an Integrated Water Management, water conservation, levee maintenance, and the Delta. In addition, EPA concluded that “The Draft EIS does not evaluate Delta can affect resources in downstream waters, such as San Francisco Bay operations, which may result in indirect environmental impacts not evaluated. We recommend that the Supplemental Draft EIS include a downstream impacts.”

On July 29, 2014, the State Water Resources Control Board (SWRCB) BDCP EIS/EIR. The SWRCB declared that the “environmental documentation project must disclose the significant effects of the proposed project of interim and long-term alternatives that would reduce or avoid

⁸⁹ 40 C.F.R. § 1502.9(a).

⁹⁰ Letter of Jared R. Blumenfeld, Regional Administrator, Region IX, USEPA, Administrator, West Coast Region, National Department of Fisheries and Wildlife, Statement for Bay Delta Conservation Plan, San Francisco Bay Delta California (CEQ#

⁹¹ p. 10.

⁹² p. 1

⁹³ p. 3.

⁹⁴ p. 1

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

environmental effects.” Further, “The justification for this limited range is not clear given that there is significant information supporting for the protection of aquatic resources and the substantial uncertainty measures will be effective in reducing the need for Delta outcrops. Delta outcrops should be considered for the preferred project.”

On July 16, 2014, the U.S. Army Corps of Engineers found that in the meeting the Corps’ needs under the National Environmental particular with regard to the incomplete description of the proposed analysis. “and impacts to waters of the United States and avoidance and minimization of, and compensatory mitigation for, impacts States.”⁹⁷ Additional Corps comments include the absence in the EIR/alternatives analysis “no showing on which alternative may contain the Damaging Practicable Alternative (LEDPA) for section 404, the Clean Water document needs a clear explanation of a reasonable range of alternatives including a concise description of the environmental consequences of conveyance was not a part of the preferred alternative for CalFed the reasons for rejecting new conveyance in the CalFed are no longer

Finally, Reclamation and DWR had to drop the attempt to deceive is part of a habitat conservation plan because of the refusal and National Marine Fisheries Service (NMFS) scientists to falsely claim would not be harmful to endangered species of fish and their rejection as “difficulties in assessing species status and issuing period of fact, federal scientists issued a “red flag” warnings that the “potential extirpation of mainstem Sacramento River populations of Chinook salmon over the term of the permit” for more than

Reclamation and DWR in their RDEIR/SDEIS have ignored what the USFWS and NMFS had to say, just as they have ignored the EWC for the past four years.

⁹⁵ Letter of Diane Riddle, Environmental Program Manager, State Water Resource Wulff, National Marine Fisheries Service, the Draft Bay Delta Conservation Plan Environmental Impact Report/Environmental Impact Statement for the Bay Delta Implementing Agreement for the Bay Delta Tunnels Case, at 2014, 11/19, p. 1.

⁹⁶ Comment 10, p. 12.

⁹⁷ Letter of Colonel Michael J. Farrell, District Commander, US Army Corps National Marine Fisheries Service, July 16, 2014, p. 1.

⁹⁸ Comment 4.

⁹⁹ Comment 5.

¹⁰⁰ Comment 19.

¹⁰¹ Comment 22.

¹⁰² DDEIR/SDEIS, Section 1, p. 1-2.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

The Tunnels Project is not permissible under the Endangered Species Act.

Section 9 of the Federal Endangered Species Act (ESA) prohibits the alternatives considered in the RDEIR/SDEIS do not involve a Section 10, but instead assume the Bureau will lead Section 7 other Tunnels Project proponents in seeking a new biological opinion (NMFS and USFWS). It is our understanding that consultation is not what the Bureau has submitted to qualify as a biological assessment stage of the process is now.

The California Endangered Species Act (CESA) contains similar take for permitted incidental take of a listed species laws RDEIR/SDEIS states only that CDFW would be a responsible agency compliance for the project. The RDEIR/SDEIS fails to state which would apply for this incidental take permit.

EWC objects to the adverse modification of critical habitat for species, which would occur under the Bay Delta Conservation Plan Tunnels Project.

The Tunnels Project is not a permissible project under the ESA, modify critical habitat for at least five endangered species threatened addressed the failure of the BDCP agencies to develop and consider alternatives increasing Delta clows by reducing exports in our July

First, the Sacramento River Winter-Run Chinook Salmon is listed the Endangered Species Act, ~~the Central Valley Spring Chinook Salmon, Central Valley Steelhead, Southern Distinct Population~~

¹⁰³ Section 9(a)(1)(B) prohibits anyone subject to the jurisdiction of the species within the United States or the territorial sea of the United States pursue, hunt, shoot, wound, kill, trap, capture, or attempt to engage Section 3 of the Endangered Species Act, subsection (19). The act is www.nmfs.noaa.gov/pr/pdfs/laws/esa.pdf

¹⁰⁴ US Fish and Wildlife Service and ~~Natural~~ ~~Species~~ ~~Service~~ Handbook: Procedures for Conducting Consultation and Conference Activities Under Species Act March 1998, Final. http://www.fws.gov/laws/esa_section7_handbook.pdf

¹⁰⁵ California Fish and Game Code Section 86 decines “take” to mean attempt to hunt, pursue, catch, capture, or kill” a listed species. Section prohibits take of listed species, Section 2081(b) authorizes the California D authorize incidental take permits under which incidental take of a listed mitigated, and 2081(c) species that no incidental take permit may be the continued existence of the species.” The California equivalent of a “natural community conservation plan” or NCCP. NCCPs are authorized under Conservation Planning Act (NCCPA) in California Fish and Game Code the statutory standards provided in Section 2820 of the act.

¹⁰⁶ The lead agencies for the project are the federal Bureau of Rec Water Resources.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Green Sturgeon and Delta Smelt are listed as **Section 7(a)(2) species** in reaches of the Sacramento River, sloughs, and the Delta that two freshwater clows through operation of the Tunnels Project are design of these cive listed endangered and **Third Interim Draft Biological Assessment** has been prepared and transmitted to the U.S. Fish and Service (USFWS) Service (NMFS) by Reclamation with respect **Fourth Interim Draft EIS Section 7(a)(2) project** consultations have begun but no Biological Opinion has been completed with respect to the effects of the operation of the Tunnels Project of fish or their design **fish critical habitat**. Reclamation's failure to Biological Assessments and failure to initiate ESA consultation, no "re alternatives" (RPAs) have been developed or suggested by the USFWS jeopardy or adverse modification of designated critical habitat.

Approval of the Tunnels Project would violate the substantive prohibition by adversely modifying designated critical habitat as well as by existence of the endangered and threatened fish species.

Approval of the Tunnels Project would violate the procedural requirements Reclamation has not evaluated its proposed action "at the earliest whether its action may affect listed species or critical habitat and consultation with USFWS and NMFS.

Approval of the Tunnels Project would violate the procedural requirements Draft EIR/EIS and RDEIR/SDEIS have not been prepared "concurrently Biological Assessments and Biological Opinions required by the ESA. Assessments and Biological Opinions, though required, do not yet exist that can be "cixed" by responses to comments in a Final EIR Department of Water Resources (DWR) must recirculate another Draft and comment. The new public Draft NEPA document must also be integrated with the ESA required Biological Assessments, Biological Opinions reasonable and prudent alternatives, developed by the USFWS and NMFS and prudent alternatives would include alternatives increasing clows through Francisco Bay by reducing exports.

No Quantified Incidental Take Estimates, the Tunnels Project alternative 5A) fail to provide clear, direct analysis and findings of effects the Tunnels Project' effects on population abundance, distribution, and those effects could result in jeopardy to listed species.

What are the sizes of the population of each covered species status, and alternative effects on their critical habitats in the Bay permissible levels of take for each covered species for each life can be managed by actions organized under BDCP and its consequences would not appreciably reduce the likelihood and recovery of any

¹⁰⁷ Each of these species is listed under the California Endangered Species Act considered threatened. Bay Delta Conservation Plan, **Species Section 11.3, Table 11-24.** Table shows that under the California Endangered Species Act, Delta smelt the BDCP species account for Delta Smelt states that the California Fish smelt to the status of endangered on March 4, 2009. (BDCP, Appendix 21-24.) Longfin smelt is considered threatened, winter-run Chinook salmon spring-run Chinook salmon threatened, fall- and late fall-run Chinook salmon special concern; and green sturgeon (southern DPS) is also considered a smelt is at this time a candidate species for listing under the federal

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

The BDCP itself identifies stressors and threats to each of the stressors to the cive species include habitat loss due to the increasing water temperatures and predation hotspots. By installing at least three locations between Clarksburg and Courtland, and by diverting from the Sacramento River, the Tunnels Project will literally and aquatic habitat available to these cive species in their critical habitat diversion will reduce low in the critical habitat and contribute temperature. The Effects Analysis chapter (Chapter 5) of the Draft admits that significant adverse effects could result from the Tunnels: their habitat including: “Change in entrainment of cish in water result of new structures. Modication of river flow. Change in habitat Permanent indirect and other indirect losses. Disturbances related to maintenance.”¹¹⁴

The BDCP identifies key hydrologic and hydrodynamic changes that habitat of these listed cish species. (See below, this section.) The and stressors already known to affect these cish. Modeling results through-Delta survival rates of winter-run, spring-run, and fall-run relative to the No Action Alternative from Tunnels Project operation.

Specifically, the BDCP identifies reduced habitat due to water storage systems as a stressor and threat to winter-run Chinook salmon on juvenile winter-run Chinook salmon including near-field (contact of predators) and far-field (reduced stream and Sacramento River attraction flows for migrating adult winter-run Chinook salmon) reduction of survival of winter-run Chinook salmon during downstream migration and possible migration of adult winter-run Chinook salmon by changing the attraction. BDCP also admits that “A potential adverse effect of the BDCP will be the reduction in low downstream of the north Delta reducing river flow below the Delta outlet flow along with change in olfactory signals due to change in the flow mixture. The RDEIR/SDEIS states: “when compared to the CEQA baseline, [Alt change, would substantially reduce the quantity and quality of spawning for winter-run Chinook salmon relative to the existing BDCP conditions” identifies

¹¹⁴ Bay Delta Conservation Plan, Chapter 5, pp. 2-13.

¹¹⁵ DEIR/SDEIS, Chapter 11, Tables 11-4A-23, 11-51, and 11-74.

¹¹⁶ BDCP EIR-EIS Administrative Draft, p. 11A-47 (March 2013).

¹¹⁷ Bay Delta Conservation Plan, Chapter 5, p. 5.3-23; RDEIR/SDEIS p. 4.3.

¹¹⁸ Bay Delta Conservation Plan, Chapter 5, p. 5.3-29.

¹¹⁹ Bay Delta Conservation Plan, Chapter 5, p. 5.3-32.

¹²⁰ Bay Delta Conservation Plan, Chapter 5, p. 5.3-45; BDCP Appendix 5C, Table SDEIS, Section 4.3, Figures 4.3.2-7 and 4.3.2-8.

¹²¹ .

¹²² DEIR/SDEIS, Section 4.3, p. 4.3.7-58.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

similar threats and stressors to the Spring-Run Chinook Salmon, Steelhead, Smelt that would result from the Tunnels Project.

The BDCP identifies several threats and stressors to the Central Salmon, which include low reductions causing increased water temperature elimination or degradation due to water conveyance systems, admits adverse effects of the proposed north Delta diversions on juvenile include near-field (physical contact with the screens and aggregation (reduced downstream flows) Plan Area clows have considerable importance migrating juvenile salmonids and will be affected by the proposed Because of the north Delta diversions, salmonids migrating down the will experience lower migration clows compared to existing conditions. Chinook salmon, it was assumed with high certainty that Plan A for migrating juvenile spring-run Chinook admitted adverse effects caused operations of the north Delta diversions include reduced attraction for migrating adult spring-run Chinook, bowler, salmon, clow downstream of intakes under the BDCP may reduce survival of juvenile spring-run downstream migration along the Sacramento River and also could ne migration of adult spring-run Chinook salmon by changing the attraction RDEIR/SDEIS again delivers bleak prospects for the survival of this “Under Alternative 4A (including climate change effects), there are cl well has temperature increases in the Sacramento River that would increases in egg mortality rates and overall reduced habitat condition egg incubation.”

The BDCP states that threats and stressors to the Steelhead in conveyance systems as well as low reductions contributing to increased temperatures.¹²⁹ The Plan admits near-field (physical contact with the predators) and far-field (reduced downstream clows leading to greater effects of the north Delta diversions on juvenile Sacramento River also admits that “Sacramento River attraction clows for migrating adult steelhead will be lower from operations of the north Delta Plan diver admits that respect to the Feather River, “the reduction in clows

¹²³ BDCP EIR-EIS Administrative Draft, p. 11A-83, 11A-76 (March 2013).

¹²⁴ Bay Delta Program Chapter 5, p. 5.4-16; see also RDEIR/SDEIS, Section 15-17.

¹²⁵ Bay Delta Program Chapter 5, p. 5.4-17; BDCP Appendix 5C, Table RDEIR/SDEIS, Section 4.3, Figures 4.3.2-7 and 4.3.2-8.

¹²⁶ Bay Delta Program Chapter 5, p. 5.4-19.

¹²⁷ Bay Delta Program Chapter 5, p. 5.4-20.

¹²⁸ RDEIR/SDEIS, Section 4.3, p. 4.3.7-98.

¹²⁹ BDCP EIR-EIS Administrative Draft, p. 11A-129, 11A-133 (March 2013).

¹³⁰ Plan Chapter 5, 5.6-11; see also RDEIR/SDEIS, p. 4.3.7-199, lines

¹³¹ Plan Chapter 5, 5.6-13; BDCP Appendix 5C, Tables C.A-41 and Figures 4.3.2-7 and 4.3.2-8.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

BDCP would reduce conditions in an already degraded Delta habitat: “In general, Alternative 4A would degrade the quantity and quality of relative to Existing Conditions.”

The BDCP identifies increased water temperatures and habitat loss the Green Strategy. With respect to admitted adverse effects, the Plan will reduce transport and migration clows in the Feather River [reduction in nearly fall releases], average in stream clows during some months above (June–September, August–October, August–June) are expected to substantially decline and moderately decline in the Sacramento BDCP, especially for the LOS [low-outflow scenario] (Appendix 5.C, turbidity, section 5.C.5.3.3, High Outflow and also, [low-outflow scenario] limits: “there is [on the Feather River] the potential for appreciable change of operational differences between the BDCP scenarios and future (EBC2_LL).”¹³⁷ The RDEIR/SDEIS states: “In general, Alternative 4A would quality of rearing habitat for larval and juvenile green sturgeon.”

The BDCP identifies several threats and stressors to the Delta and increased water temperature. Admitted adverse effects caused by the intakes include reducing the quantity of sediment entering the Plan clarity and negatively affecting the Delta smelt residence time from cha operations will likely increase the Microtox[®] having been both a direct effects on the Delta intakes’ operations will introduce and impingement of Delta smelt as well as introduce and increase new intakes.

In 2013, NMFS reiterated its previous “Red Flag” comment that “potential extirpation of of mainstem Sacramento River Populations of winter Chinook salmon over the term of the project.”¹⁴³ The project’s Section Ag

¹³² am) Chapter 5, pp. 6–16.
¹³³ RDEIR/SDEIS, Section 4.3, p. 4.3.7–22.
¹³⁴ BDCP EIR–EIS Administrative Draft, 11A–162–165 (March 2013).
¹³⁵ am) Chapter 5, pp. 8–17 through 8–24.
¹³⁶ am) Chapter 5, p. 8–18.
¹³⁷ am) Chapter 5, p. 8–24.
¹³⁸ RDEIR/SDEIS, Section 4.3, p. 4.3.7–296.
¹³⁹ BDCP EIR–EIS Administrative Draft, p. 11A–8–11 (March 2013).
¹⁴⁰ am) Chapter 5, p. 5. 1–30; see also RDEIR/SDEIS, Section 4.3, p. 4.3.7–22.
¹⁴¹ am) Chapter 5, p. 5. 1–32; BDCP, Appendix 5C, p. 5.4–14; RDEIR/SDEIS, Section 4.3, p. 4.3.7–22.
¹⁴² RDEIR/SDEIS, Section 4.3, p. 4.3.7–24, lines 4–7.
¹⁴³ NMFS Progress Assessment and Remaining Issues Regarding the Administrative Section 1.1.7, p. 12, April 4, 2013.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

(EPA) and has called for alternatives addressing the need for water to flow through the Delta, the Army Corps of Engineers, State Water Board, and USFWS scientists also raised concerns regarding the BDCP and its impacts to endangered and threatened species.

However, comments from other federal agencies were ignored. In April, conservation elements of the BDCP have been dropped or drastically altered to the “California Water Fix.” As Justice and the “wetland restoration” has been revised at all levels. Consequently, the current Tunnels Project is not comparable to the previous version that resulted in the concerns of Engineers, State Water Resources Control Board, and NMFS.

“The goal of the ESA is not just to ensure survival but it can be a precedent to the commands of the ESA, each Fed that any action authorized, funded, or carried out by such agency continued existence of any endangered or threatened species or their critical habitat. Modification of critical habitat for the purpose of establishing ‘critical habitat’ is for the government to carve out territory that is survival but also essential for the species’ existence. Any potential conserv measures outside of the critical habitat cannot properly be a substitute critical habitat that is required by Section 7 of the ESA, 16

Taking the fresh water clows and safe refuge away from endangered would neither insure their survival nor insure their recovery and restoration is not a lawful substitute under the ESA for maintain the waters of the Sacramento River, sloughs, and Delta. The reduced residence times of water, and increased water temperature are adverse critical habitat. Approval of the BDCP would violate the ESA. The permissible under the ESA.

¹⁴⁴ EPA Letter, August 26, 2014, p. 2.

¹⁴⁵ We briefly summarized some of these agencies’ comments in our July

¹⁴⁶ DEIR/SDEIS, Executive Summary, p. ES-17. Emphasis added.

¹⁴⁷ *Washington v. Lubarck*, 510 U.S. 1043, 1054 (2003); *Washington v. U.S. Wildlife Service*, 378 F.3d 1059, 1070 (9th Cir. 2004).

¹⁴⁸ 16 U.S.C. § 1536(a)(2). Emphasis added.

¹⁴⁹ *Sifford v. Pinchot*, 378 F.3d 1059, 1070.

¹⁵⁰ *Sifford v. Pinchot*, 378 F.3d 1059, 1076.

¹⁵¹ We have brought the impermissibility of the Tunnels Project given and the related procedural ESA and NEPA violations to the attention of on occasions for more than two years now. These prior communications include September 25 and November 18, 2013, January 14, March 6, May 21, and EWC letter of June 11, 2014 (including pp. 29-30) and our recent extension of time to comment, and July 22 (alternatives), 2015. We also had a meeting with federal agency representatives in Sacramento on November 7, 2015.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Reclamation is presently violating both NEPA and ESA Procedure EIR/EIS Concurrently with and Integrated with ESA Required Biological Biological Opinions. Specifically, the ESA obligates federal agencies to afford declared national policy of saving designated species. Reclamation has failed to prepare a Biological Assessment pertaining to its action and has failed to consult with USFWS and NMFS even though Biological Assessment preparation and consultation are required by the ESA. The ESA, RDEIR/SDEIS concedes that “formal consultation will be necessary.”

Section 7 of the ESA (16 U.S.C. § 1536(a)(4)) requires that “action which affect a listed species or critical habitat, it must first form a determination of the Secretary of the Interior, or his or her designee, and if so required when the acting agency or consulting agency may determine that to adversely affect a listed species or critical habitat requires the agency to issue a biological opinion stating whether the such species or habitat.”

ESA Regulations (50 C.F.R. § 402.14(a)) require that “Each Federal action the earliest possible time determine whether any action may affect listed species or habitat. If such a determination is made, the formal consultation process must be initiated. The Supreme Court of Appeals has repeatedly held that the effect of any proposed action of an undetermined character, which triggers the formal consultation requirement.”

Even the most ardent advocates for the Tunnels Project who prepared the 48 Project documents do not contend that taking large quantities of water from the River, sloughs, and Delta will not have “any possible effect, whether an undetermined character” on the endangered and threatened fish. Surprisingly, no preposterous claim of “no possible effect” is made in the SDEIS. But instead of reviewing the proposed Tunnels Project at Reclamation delays ESA review until some unspecified and unacknowledged time.

NEPA regulations require that “To the fullest extent possible, agencies shall prepare environmental impact statements concurrently with and integrated with the

¹⁵² Tennessee Valley Authority v. TVA, 373 U.S. 576, 83 S.Ct. 185 (1978).

¹⁵³ See RDEIR/SDEIS, Chapter 1, p. 1-15 (under “Section 7 of the End

¹⁵⁴ RDEIR

¹⁵⁵ *Wetzel*, 747 F.3d 581, 596. Emphasis in decision.

¹⁵⁶ 50 C.F.R. §§ 402.13, 402.14.

¹⁵⁷ 16 U.S.C. § 1536(b); 50 C.F.R. § 402.14.

¹⁵⁸ *Baruk Tribe of California v. EPA*, 687 F.3d 1006, 1020 (9th Cir. 2012) (en banc added), cert. denied, 135 S.Ct. 1579 (2013).

¹⁵⁹ *Western Watersheds Project v. EPA*, 687 F.3d 1006, 1020 (9th Cir. 2012) (en banc added), cert. denied, 135 S.Ct. 1579 (2013).

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

analyses and related surveys and studies required by the [ESA] regulations also acknowledge that the agencies are expected to both Section 7 of the Clean Water Act and the ESA. This threat of extinction the draft EIS public review and comment stage without Biological Opinions leaves the public in the dark and violates both the ESA required analyses, the draft EIS/EIR is “so inadequate as to violation of NEPA.

Reclamation has violated the “at the earliest possible time” ESA and integrated with” NEPA mandate by prematurely issuing the Draft SDEIS attempting to hide from the reviewing public the critical that would be supplied by the missing Biological Assessments and upstream diversions of large quantities of water from the Sacramento the listed cish species and their critical habitats.

The public now has what it needs to make an informed decision: from the consultants speculating that the adverse effects will be offset or that the adverse. **The public does not have what it needs to make an informed decision:** Biological and Biological Opinions required by the ESA and NEPA.

Evasion of ESA obligations by Reclamation is both extreme and August 26, 2015, joined with DWR in submitting a change petition Control Board to add three new points of diversion and redivers permits for the Tunnels Project. The change petition recites that culmination of a multiyear planning process the passage of 2006 without a biological opinion for the Tunnels Project makes a commence ESA review “at the earliest possible time.” Because Biological Assessments and Biological Opinions, Reclamation feels free to false representation in the petition that “The California Water Fix would improved conditions in the Delta for endangered and threatened supply reliability for the state.”

¹⁶⁰ 40 C.F.R. § 1502.25(a).

¹⁶¹ 40 C.F.R. § 402.06 (“Consultation, conference, and biological assessment may be consolidated with interagency cooperation procedures required by other National Environmental Policy Act (NEPA).” 16 U.S.C. § 581, 648. “ESA compliance is “an agency may not take actions that will tip a species from a extinction.” *Nat'l Wildlife Fed'n v. Nat'l Wildlife Fed'n*, 527 F.3d 1191, 1199, 30 Cir. 2017 (9th Cir. 2017).

¹⁶² 40 C.F.R. § 1502.20(a) rule is the same. Recirculation is required when alternatives were not included in the Draft EIR. CEQA Guidelines, § 14 C. “The draft EIR was so fundamentally and basically inadequate and conclusively public review and comment were precluded.” CEQA Guidelines, § 15088.5(a)(4).

¹⁶³ “The ESA requires an agency to use the best scientific and con BiOp.” *Backe v. F.3d* 971, 995. “The purpose of the best available science from basing its action on the species and § 7 and § 3 of the

¹⁶⁴ Petition cover letter, p. 1.

¹⁶⁵ Petition cover letter, p. 2.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Red flag comments and the Record so far have made it clear uncertainty about whether the Tunnels Project is even permissible cannot be resolved until the Biological Assessments and Opinions have Reclamation has not obtained the determination pursuant to the ESA-require the RDEIR/SDEIS the “preferred alternative”—the Tunnels Project—is even lawful.

Against this threat of extinction from known stressors and negative impacts conducting the NEPA environmental draft process prior to and in consultation process violates the ESA command to carry out the possible time” and violates the NEPA command to conduct the “concurrently” and in an “integrated” manner. This also constitutes segmenting of the NEPA process from the ESA required analysis posed by the proposed Tunnels Project.

Reclamation is Proceeding in the Absence of the “Reasonable and Must be Developed and Identified Reclamation” Ignored repeated warnings and suggestions made to them over the years by EPA, U.S. Army Corps of Engineers, and State Water Resources Control Academy of Sciences and by the Environmental Water Caucus (EWC) documents including the Draft EIR/EIS and the new RDEIR/SDEIS to alternatives increasing freshwater flows through the Delta by reducing new upstream conveyance.

Beyond ignoring the NEPA alternatives mandate, expert government agency EWC, Reclamation is also ignoring the crystal clear prohibitions and The previous section set forth the procedural ESA requirements for possible time” and the procedural NEPA requirements for the NEPA “concurrently with and integrated with” the analyses required by the

There is more. Under Section 7 of the ESA, 16 U.S.C. § appears that an action may affect an endangered or threatened provide a biological opinion to the action agency explaining how critical habitat 1536(b)(3)(A) a biological opinion concludes that the jeopardize an endangered or threatened species, or adversely modify agency must suggest reasonable and prudent alternatives. The course of proposing an RPA, must insure that the RPA habitat.¹⁶⁸

EWC member groups wrote to state and federal officials that Re attempt to sell the Tunnels Project as part of the Delta Water and scientists were unwilling to condone falsely that the Tunnels Project endangered species of fish and their habitat. The RDEIR/SDEIS euph

¹⁶⁶ Letter of EWC member groups to state and federal officials, July 2015, <http://restorethedelta.org/wp-content/uploads/2015/09/7-22-15-BDCP-alt-ltr.pdf>

¹⁶⁷ Cottonwood Env'tl. Law Ctr. 79 U.S. 581, 586, 776 F.3d 971, 988.

¹⁶⁸ *Swill*, 747 F.3d 581, 636.

¹⁶⁹ *Swill*, 747 F.3d 581, 636.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

assessing species status and issuing assurances over a 6-year period, the 50-year permit term for three years, federal scientists have issued a “Red Flag” warnings that “potential extirpation of the mainstem Sacramento River populations of winter Chinook salmon over the term of the permit,” contrary to public

At this time, the Draft EIR/EIS and RDEIR/SDEIS alternatives and value whatsoever to neither decision-makers nor the public. This app the part of Reclamation and DWR to evade the solemn legal for public review and comment a reasonable range of alternatives increase freshwater clows through the Delta by reducing exports and upstream conveyance. A central feature of this intentional violation of premature issuance by Reclamation of the Draft EIR/EIS and RDEIR/ with the other hand, Reclamation has deliberately failed to prepare and initiate formal ESA consultation with USFWS and NMFS.

Other Ecological Issues Bay Delta Conservation Plan fails to provide its biological goals and objectives will be implemented and used for making progress towards recovery of listed species and minimizing compliance with the terms of the implementing agreement and incident

Last year, the BDCP failed to provide adequate assurances that its and objectives will be implemented. In the year, the Tunnels Project alternatives SDEIS, having removed Section 10 habitat conservation plan obligations, ecological issues we identified completely unaddressed.

In the absence of any biological opinions for listed species for and the 2015 Tunnels Project alternatives the full scope of the mitigations are unknown, and therefore the description of alternatives the RDEIR/SDEIS inadequate, and must be recirculated once the biological jeopardy of listed species and reasonable and prudent alternatives are

Also, California EcoRestore is supposed to take up some of the functions from BDCP relative to the 2015 Tunnels Project alternative unaddressed in the RDEIR/SDEIS. It should be addressed in Cumulative California EcoRestore's role in the RDEIR/SDEIS is highly ambiguous. is, none that is reasonably foreseeable), then omission of its analytical the latter document premature and inadequate to the task assigned

There is also a gaping ambiguity on the relationship of California of Section 7 biological opinions for listed Delta smelt and salmon least partially addressed by the Decision Tree hypotheses last year. restoration is expected, and limited to requirements already imposed biological opinions, according to the RDEIR/SDEIS.

¹⁷⁰ RDEIR/SDEIS, Section 1, pp. 1-2.

¹⁷¹ The same is true for the DWR and Bureau of Reclamation ciling points of diversion of state and federal water project water right Control Board, and dredge and cill permit (Section 404) with the

¹⁷² EWC Comment Letter, June 11, 2014, pp. 38-44.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Flawed Habitat Restoration Hypothesis for Increasing Food Webs and Producing Project alternatives this year with withdraw from any pretense of addition that already required of the DWR and Bureau. What becomes of other possible management strategies, to address nonnative invasive clam (*Potamocorbula*), as we discussed last year, is gapingly ambiguous. How addressed in the new Section 7 biological opinions, but these are which the biological opinions will address last year's "habitat for characterized then as "magical thinking" remains unknown at this time rendering the RDEIR/SDEIS inadequate. Without the biological opinions, the "environmental commitments" are wishes and prayers at this time, USFWS and California Department of Fish and Wildlife are not

Freshwater flow expands native fishes' critical habitat, nonnative *Potamocorbula* westward, putting greater distance between its pelagic food webs and nutrients in Suisun Bay and the western species and juvenile and smolting salmon migrating to sea.

The Tunnels Project alternatives continue to fail to prevent jeopardize under the Endangered Species Acts. Tunnels Project incidental take rejected by the state and federal fishery agencies.

Clean Water Act Violations

The Tunnels Project will violate water quality standards for low flow preventing necessary Clean Water Act Section 401 certification of Water Resources and the United States Bureau of Reclamation ciled 404 dredge and cill permit with the US Army Corps of Engineering an application for a 401 certification on September 23, 2015 and the Control Board (SWRCB) the 404 permit will be needed from the A because construction of the Tunnels Project will result in discharges waters of the United States. 401 requires that the SWRCB certify 404 permit meets CWA requirements before the State and Federal

¹⁷³ pp. 41-42.

¹⁷⁴ Accessed September 15, 2015. <http://www.water.ca.gov/Media/RegulatoryPublicNotices/tabid/1035/Article/616568/spk-2008-00861-california-watercix-project.aspx>

¹⁷⁵ "Many of the actions that will be implemented under the Tunnels dredged or cill materials into waters of the United States and will Draft Plan § 1.3.7.1 (November 2013). <http://www.water.ca.gov/Libraries/Dynamic Document Library/Public Draft BDCP Chapter 1 Introduction.sc> This is no less intake construction of the "California WaterFix" version (Alternative 4A) of

¹⁷⁶ "No license or permit shall be granted until the certification requirement has been waived as provided in the preceding sentence. No license or has been denied by the State, interstate agency, or the Administrator, as (1).

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

agencies have long recognized the importance of this requirement, in the context of the preparation of the Tunnels Project EIR.

In the Administrative Draft of the Bay Delta Conservation Plan, the conservation strategy announced by BDCP will fundamentally alter the hydrodynamic Delta.¹⁷⁸ This sentence has since been toned down to read, “The hydrodynamics (i.e., tidal clows) in the Delta channels, “~~will be~~ affected.” Overall, it says BDCP, east to west clows will increase; the frequency of Old and Middle River will decrease because of reduced south Delta types. In the north Delta, clow patterns will “change” from increased to the proposed modifications to Fremont Weir. BDCP states: ~~“~~

These changes in clow patterns in the north Delta present ecosystem- the Yolo Bypass and the Sacramento River during the winter- spring positive and negative effects on the migration and passage of cish.

This year, the Tunnels Project freed from habitat and ecosystem touted to accomplish what BDCP apparently could not:

The ecological problems with the current system could be greatly reduced by new north Delta intake structures with state-of-the-art cish screens.

Although Alternatives 4A, 2D, and 5A comprise only the conveyance facilities formerly constituted [Conservation Measure 1] under BDCP alternatives, and restoration beyond what is needed to provide full mitigation under CE, still recognized as a critical component of the state's long-term plans; the Delta beyond these alternatives' mitigation requirements will occur separate implementation of California EcoRestore, and these activities will be further independent of the water conveyance facilities.¹⁸⁰

¹⁷⁷ As reflected by U.S. EPA in its comments on these discussions: requirement that the NEPA document prepared for an HCP under the basis for permits and certifications required under CWA §404 to authorize recognizes the importance of coordination in federal review. Toward this end, with the project proponent on numerous occasions over the past several BDCP EIS/EIR to inform the Corps' 404 regulatory decisions. Despite these issues remain about the scope of analysis for the proposed project, the consultation process and federal permitting, and the structure of a comprehensive proposed project.” U.S. EPA, “EPA's Comments on BDCP ADEIS,” www2.epa.gov/sites/production/ciles/documents/july3-2013-epa-comments-bdcp-adeis.pdf

¹⁷⁸ Administrative Draft of the Bay Delta Conservation ~~Effects~~ ~~Plan~~ ~~Part~~ ~~2~~ ~~3~~ ~~line~~ ~~23~~. ~~Emphasis~~ added.

¹⁷⁹ Bay Delta Conservation Plan, ~~Effects~~ ~~Plan~~ ~~Part~~ ~~2~~ ~~3~~ ~~line~~ ~~23~~.

¹⁸⁰ ~~bid~~ p. 5.3-2, lines 34-37.

¹⁸¹ RDEIR/Supplemental Summary, p. ES-2, lines 1-2.

¹⁸² RDEIR/Supplemental Summary, p. ES-8.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

*These **stated** **practices** **contributing** **ecological** **and** **biological** **benefits** **to** **cish** **Project** **are**, **like** **last** **year's** **BDCP** **Conservation** **Measure** **1**, **the** **Tunnels** **Project** **will** **increase** **exports** **and** **the** **Delta's** **loss** **of** **out** **above** **normal** **flows**. Moreover, **in** **drought** **years**, **the** **Bureau** **and** **the** **petition** **the** **State** **Water** **Board** **to** **have** **Delta** **water** **quality** **object** **this** **request**. There **is** **little** **reason** **to** **believe** **the** **Tunnels** **Project***

*The **project** **reduces** **Delta** **freshwater** **low** **conditions** **in** **violation** **the** **protect** **the** **most** **sensitive** **beneficial** **uses**. **of** **proposals** **of** **the** **Tu** **EIR/EIS** **alternatives** **will** **ensure** **that** **its** **implementation** **trips** **over** **the** **CWA** **Flow** **regimes** **that** **fully** **protect** **Delta** **ecosystems** **and** **aquatic** **this** **result**.*

CWA **regulations** **dictate** **that** **adopted** **criteria** **must** **protect** **the** **“most** **The** **SWRCB's** **August** **2010** **low** **criteria** **requirements** **of** **to** **unimpaired** **low** **that** **would** **protect** **Delta** **cish** **species** **and** **habitats**. **needed** **to** **comply** **with** **CWA** **mandates**. **A** **new** **Bay-Delta** **Plan** **proposed** **low** **regimes** **would** **fall** **significantly** **short** **of** **this** **benchmark** **protect** **the** **most** **sensitive** **beneficial** **uses** **as** **required** **by** **the** **CW**

Instead **of** **improving** **low** **conditions** **in** **the** **Delta**, **the** **Plan** **and** **Tunnels** **exports** **reduced** **inadequate** **Delta** **outflow** **in** **many** **months**. **Speci** **February** **through** **June**, **the** **Tunnels** **reduced** **by** **about** **1,000** **per** **second** **times** **the** **median** **Delta** **outflow** **for** **the** **2,000** **of** **January** **through** **June** **(the** **time** **period** **during** **which** **the** **August** **called** **for** **an** **increase** **of** **outflow** **to** **75** **percent** **of** **unimpaired** **outflow**. **Tunnels** **Project** **modeling** **(Figure** **1)** **shows** **that** **long-term** **River** **clows** **below** **the** **north** **Delta** **recreational** **between** **two** **38** **percent** **current** **and** **future** **clows** **without** **the** **Tunnels** **project**, **and** **in** **we** **between** **7** **and** **42** **percent** **(Tables** **3** **and** **4)**. **Overall**, **monthly** **projected** **by** **“California** **Water** **Fix”** **to** **decrease** **between** **20** **and** **24** **Sacramento** **River** **at** **Rio** **Vista** **are** **expected** **to** **decrease** **significantly**

¹⁸³ **We** **take** **up** **the** **matter** **of** **BDCP's** **unacknowledged** **purpose** **of** **expa** **water** **market** **transfers** **in** **Section** **VI** **of** **this** **comment** **letter**.

¹⁸⁴ **40** **CFR** **§** **131.11** **(“For** **waters** **with** **multiple** **use** **designations**, **the** **use”)**; **see** **also** **40** **CFR** **§** **131.6**.

¹⁸⁵ **Public** **Draft** **Plan**, **App.** **5B**, **Fig.** **Delta** **5B.4**, **and** **available** **drafts** **Dynamic** **Document** **Library/Public** **Draft** **BDCP** **EIREIS** **Appendix** **5B** - **Responses** **to** **Reduced** **South** **of** **Delta** **Water** **Supplies**. **See** **also** **BDCP/California** **Water** **Fix**, **SDEIS**, **2015**, **Section** **4.3.1**, **Figures** **4.3.1-15**, **16**, **18**, **19**, **20**, **and**

¹⁸⁶ **Public** **Draft** **Plan**, **App.** **5C**, **Attachment** **5C.A**, **Table** **C.A-41**, **available** **baydeltaconservationplan.com/Libraries/Dynamic** **Document** **Library/Public** **Draft** **BDCP** **Appendix** **5C** - **Part** **5** - **Flow** **Passage** **Salinity** **and** **Turbidity**. **sc**. **ashx**

¹⁸⁷ **Estimates** **derived** **by** **Restore** **the** **Delta** **from** **graphical** **analysis** **interpolated** **4.3.2-8** **from** **the** **Recirculated** **Draft** **EIR/EIS**, **Section** **4.3**.

Environmental Water Caucus Comments on Recirculated Draft EIR/Supplemental Draft EIS for Bay Delta Conservation Plan and Tunnels Project

**Figure 4.3.2-1
Sacramento River Flow Downstream of North Delta Intakes for Alternative 4A, Long-Term Averages**

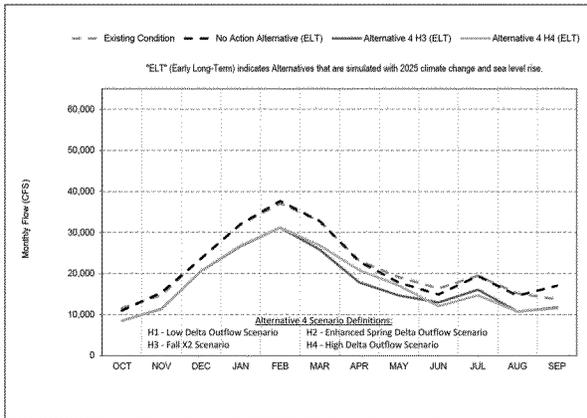


Figure 4.3.2-8

Sacramento River Flow downstream of North Delta Intakes for Alternative 4A, Long-Term Average

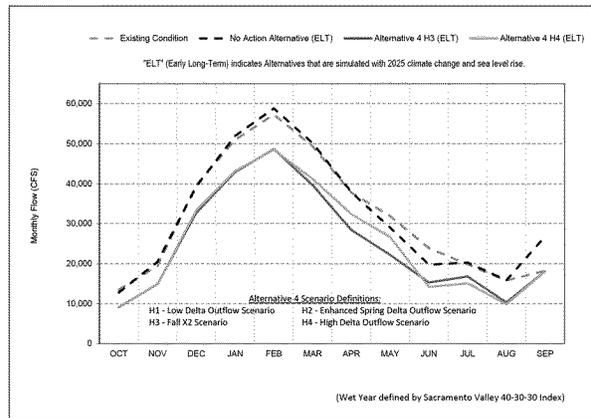


Figure 4.3.2-7

Sacramento River Flow downstream of North Delta Intakes for Alternative 4A, Average Wet Years

Source: RDEIR/SDEIS, Section 4.3.

**Table 4.3.2-8
Monthly Long-Term Average Estimates of Flow for Lower Delta Intakes Interpolated from Figure 4.3.2-8**

	Existing Conditions	No Action Alternative	Alt Scenario H3	Alt Scenario H4	% Change to EC	% Change to EC	% Change from H	% Change from H
October	11,667	11,333	8,667	8,667	-26%	-26%	-24%	-24%
November	15,333	16,000	11,667	11,667	-24%	-24%	-27%	-27%
December	23,333	23,333	20,667	20,667	-11%	-11%	-11%	-11%
January	36,000	36,000	25,667	25,667	-29%	-29%	-29%	-29%
February	37,000	37,667	31,333	31,333	-15%	-15%	-17%	-17%
March	33,000	33,000	26,333	27,333	-20%	-17%	-20%	-17%
April	23,333	23,667	14,667	21,000	-37%	-10%	-38%	-11%
May	19,000	18,000	14,667	17,000	-23%	-11%	-19%	-6%
June	16,667	15,000	13,000	12,000	-22%	-28%	-13%	-20%
July	19,333	19,333	16,000	14,667	-17%	-24%	-17%	-24%
August	15,333	15,000	11,000	11,000	-28%	-28%	-27%	-27%
September	14,000	17,000	11,667	11,667	-17%	-17%	-31%	-31%
Average	22,000	22,111	17,111	17,722	-22%	-20%	-23%	-20%

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Table 4.3.2-8

Monthly Long-Term Average Estimates of Flow for Lower Delta Intakes Interpolated from Figure 4.3.2-8

	Existing Conditions	No-Action Alternative	Alt Scenario H3	Alt Scenario H4	% Change from EC to EC	% Change from H to H	% Change from H to H	% Change from H to H
--	---------------------	-----------------------	-----------------	-----------------	------------------------	----------------------	----------------------	----------------------

Source: Bay Delta Conservation Plan/California Water Fix Recirculated Draft EIR/Supplemental Draft EIS for the Delta.

Table 4.3.2-7

Monthly Wet Year Average Estimates of Flow for Lower Delta Intakes Interpolated from Figure 4.3.2-7

	Existing Conditions	No-Action Alternative	Alt Scenario H3	Alt Scenario H4	% Change from EC to H	% Change from H to H	% Change from H to H	% Change from H to H
October	13,333	12,667	9,000	9,000	-33%	-33%	-29%	-29%
November	20,000	21,000	14,667	14,667	-27%	-27%	-30%	-30%
December	40,000	40,000	33,333	34,000	-17%	-15%	-17%	-15%
January	51,333	52,000	42,667	43,333	-17%	-16%	-18%	-17%
February	56,667	55,333	48,000	48,000	-15%	-15%	-13%	-13%
March	49,333	50,000	39,333	41,333	-20%	-16%	-21%	-17%
April	38,333	38,333	28,667	32,667	-25%	-15%	-25%	-15%
May	32,000	28,667	22,000	26,667	-31%	-17%	-23%	-7%
June	24,000	20,000	14,667	14,000	-39%	-42%	-27%	-30%
July	20,000	20,333	16,667	15,000	-17%	-25%	-18%	-26%
August	16,000	16,000	10,667	10,000	-33%	-38%	-33%	-38%
September	18,000	25,333	18,000	18,000	0%	0%	-29%	-29%
Average	31,583	31,639	24,806	25,556	+23%	+21%	+24%	+22%

Source: Bay Delta Conservation Plan/California Water Fix Recirculated Draft EIR/Supplemental Draft EIS for the Delta.

Environmental Water Caucus Comments on Recirculated Draft EIR/Supplemental Draft EIS for Bay Delta Conservation Plan and Tunnels Project

Figure 2 Flow Differences in the Sacramento River Below Facilities by Water Year Type

Supplemental Modeling Results for New Alternatives

Table B.7-28. Differences* (Percent Differences) between Pairs of Model Scenarios for the Sacramento River Downstream of the North Delta Diversion Facility, Year-Round

Alternative 4A ELT: In Delta—Sacramento River Downstream of North Delta Diversion Facility					
Month	Water Year Type	EXISTING CONDITIONS vs. H3 ELT	NAA ELT vs. H3 ELT	EXISTING CONDITIONS vs. H4 ELT	NAA ELT vs. H4 ELT
JAN	W	-8,839 (-15.8%)	-9,041 (-17.4%)	-7,770 (-13.2%)	-8,772 (-16.9%)
	AN	7,749 (19.4%)	-6,852 (-17.6%)	-7,426 (-18.6%)	-6,529 (-16.8%)
	BN	-5,110 (-21.5%)	-8,443 (-24.2%)	-4,881 (-20.5%)	-4,211 (-18.2%)
	D	-2,362 (-13.5%)	-2,338 (-13.4%)	-2,271 (-13%)	-2,247 (-12.9%)
	C	-1,489 (-10.4%)	-1,724 (-13.9%)	-1,583 (-11.1%)	-1,818 (-12.5%)
FEB	All	-5,292 (-16.6%)	-5,393 (-16.8%)	-5,114 (-16%)	-5,215 (-16.3%)
	W	-6,648 (-15.1%)	-7,010 (-17.3%)	-6,794 (-15.3%)	-7,039 (-17.6%)
	AN	-6,358 (-19.9%)	-7,591 (-16.2%)	-6,933 (-15.2%)	-6,168 (-17.8%)
	BN	-6,740 (-21.1%)	-6,501 (-20.5%)	-6,073 (-19%)	-6,094 (-18.4%)
	D	3,811 (18.4%)	-3,727 (-17.7%)	-3,914 (-18.3%)	-3,730 (-17.7%)
MAR	C	-1,437 (-9.9%)	-1,171 (-8.1%)	-1,496 (-10.2%)	-1,312 (-9.4%)
	All	-5,892 (-15.9%)	-6,448 (-17.1%)	-5,918 (-13.7%)	-6,474 (-17.2%)
	W	-9,752 (-19.7%)	-10,334 (-21%)	-9,204 (-16.6%)	-9,087 (-17.9%)
	AN	-9,309 (-20.9%)	-9,318 (-22%)	-8,600 (-19.3%)	-9,209 (-20.4%)
	BN	-7,641 (-31.2%)	-6,162 (-26.8%)	-5,674 (-23.2%)	-4,195 (-18.2%)
APR	D	-4,605 (-22.3%)	-4,232 (-20.9%)	-4,019 (-19.5%)	-3,646 (-18%)
	C	-1,286 (-9.7%)	-1,086 (-8.3%)	-1,437 (-10.8%)	-1,237 (-9.2%)
	All	-6,958 (-21.2%)	-6,932 (-21.1%)	-5,921 (-18%)	-6,895 (-18%)
	W	-9,336 (-25.7%)	-9,411 (-24.8%)	-5,368 (-14.2%)	-5,443 (-14.4%)
	AN	-8,102 (-31.2%)	-7,516 (-29.6%)	-3,656 (-14.1%)	-3,070 (-12.1%)
MAY	BN	-9,748 (-22.2%)	-8,440 (-19.9%)	-2,028 (-11.4%)	2,531 (14.7%)
	D	-1,713 (-13.2%)	-1,558 (-10.1%)	-1,296 (-9%)	-1,142 (-8.9%)
	C	-596 (-4.8%)	-598 (-4.6%)	-727 (-5.5%)	-576 (-4.5%)
	All	-5,282 (-22.8%)	-5,071 (-22.1%)	-2,268 (-9.9%)	-2,078 (-9.1%)
	W	-9,729 (-30.5%)	-6,842 (-23.5%)	-1,259 (-16.5%)	-2,472 (-8.2%)
JUN	AN	-4,789 (-22.8%)	-3,475 (-17.6%)	-852 (-4.1%)	462 (2.3%)
	BN	-2,653 (-18.6%)	-1,424 (-11%)	-301 (-2.1%)	923 (7.1%)
	D	-832 (-7.6%)	-478 (-4.5%)	732 (6.7%)	-379 (-3.6%)
	C	-319 (-4.1%)	796 (8.7%)	-390 (-3%)	777 (9.6%)
	All	-4,468 (-23.3%)	-3,130 (-17.5%)	2,062 (10.8%)	-724 (-4.1%)
JUL	W	-6,590 (-35.9%)	-4,448 (-22.5%)	-9,667 (-40.4%)	-5,525 (-28%)
	AN	-8,291 (-20.2%)	-2,146 (-14.2%)	-4,474 (-27.4%)	-3,328 (-22%)
	BN	-576 (-4.2%)	-131 (-1%)	-1,672 (-10.3%)	-1,228 (-9.3%)
	D	-114 (-0.9%)	-430 (-3.4%)	-997 (-8.2%)	-1,313 (-10.5%)
	All	-3,491 (-20.9%)	-1,935 (-13%)	-4,356 (-26.5%)	-2,860 (-19.2%)

Bay Delta Conservation Plan/California WaterFix RDEIR/SDEIS

B-357

2015 ICF 00139.14

Supplemental Modeling Results for New Alternatives

Alternative 4A ELT: In Delta—Sacramento River Downstream of North Delta Diversion Facility					
Month	Water Year Type	EXISTING CONDITIONS vs. H3 ELT	NAA ELT vs. H3 ELT	EXISTING CONDITIONS vs. H4 ELT	NAA ELT vs. H4 ELT
JUL	W	-3,038 (-15.3%)	-3,493 (-17.2%)	-4,796 (-24.1%)	-3,250 (-25.8%)
	AN	-2,622 (-12.2%)	-3,234 (-14.6%)	-4,724 (-21.9%)	-5,335 (-24%)
	BN	-2,676 (-12.8%)	-2,676 (-12.8%)	-4,181 (-20%)	-4,180 (-20%)
	D	-3,793 (-19.7%)	-3,190 (-17.1%)	-5,186 (-24.9%)	-4,583 (-24.5%)
	C	5,314 (34.5%)	-4,065 (-28.7%)	-5,041 (-32.7%)	-3,793 (-26.8%)
AUG	All	-3,414 (-17.5%)	-3,333 (-17.1%)	-4,892 (-24.6%)	-4,740 (-24.3%)
	W	5,461 (34.5%)	-5,577 (-34.8%)	-5,917 (-37.4%)	-3,893 (-37.7%)
	AN	-1,226 (-20.3%)	-3,934 (-23.7%)	-4,922 (-31%)	-5,630 (-33.9%)
	BN	-1,142 (-20.3%)	-2,743 (-18%)	-3,208 (-20.3%)	-2,801 (-18.4%)
	D	-6,927 (-40.8%)	-4,466 (-30.8%)	-1,733 (-9.5%)	-2,713 (-16.7%)
SEP	C	1,311 (13%)	314 (5.2%)	-686 (-8.8%)	-188 (-2%)
	All	-4,453 (-25.3%)	-3,952 (-26.1%)	-4,424 (-23.1%)	-3,823 (-26.7%)
	W	-122 (-0.7%)	-8,712 (-52.5%)	-146 (-0.8%)	-8,736 (-52.5%)
	AN	-892 (-6.4%)	-6,871 (-41.8%)	-1,377 (-14.7%)	-9,665 (-46.9%)
	BN	-4,050 (-32.6%)	-4,406 (-34.5%)	-4,355 (-36.7%)	-4,911 (-38.4%)
OCT	D	-4,443 (-36.6%)	-2,036 (-20.9%)	-4,329 (-35.6%)	-3,922 (-31.7%)
	C	-1,024 (-12.1%)	-227 (-3%)	715 (8.8%)	83 (1.1%)
	All	-1,879 (-14.4%)	-5,293 (-31%)	-2,162 (-15.7%)	-5,477 (-32.1%)
	W	-4,396 (-32.5%)	-3,674 (-28.7%)	-4,299 (-31.8%)	-3,576 (-28%)
	AN	-2,898 (-26.1%)	-2,287 (-21.2%)	-2,925 (-26.3%)	-2,234 (-21.4%)
NOV	BN	-3,116 (-27%)	-2,141 (-20.2%)	-3,186 (-27.6%)	-2,210 (-20.9%)
	D	-1,248 (-18.9%)	-1,898 (-18.6%)	-1,995 (-19.4%)	-1,945 (-19%)
	C	-2,303 (-19.9%)	-1,313 (-14%)	-1,966 (-19.5%)	-1,282 (-13.6%)
	All	-3,071 (-26.4%)	-2,463 (-22.4%)	-3,061 (-26.4%)	-2,453 (-22.3%)
	W	-4,252 (-23.4%)	-5,384 (-27.3%)	-4,621 (-23.8%)	-5,854 (-27.6%)
DEC	AN	-3,008 (-19.6%)	-4,362 (-27.1%)	-2,841 (-18.6%)	-4,395 (-26.1%)
	BN	-3,226 (-25.7%)	-4,198 (-21%)	-3,301 (-26.3%)	-4,273 (-31.5%)
	D	-3,894 (-28.4%)	-3,025 (-24.2%)	-3,607 (-28%)	-3,238 (-25.9%)
	C	-1,380 (-14.3%)	-1,196 (-12.7%)	-1,529 (-13.9%)	-1,345 (-14.2%)
	All	-3,381 (-22.9%)	-3,994 (-25.9%)	-3,460 (-24.4%)	-4,073 (-26.4%)
JAN	W	-6,880 (-17.6%)	-6,607 (-16.8%)	-6,348 (-16%)	-5,075 (-15.2%)
	AN	-1,898 (-6.9%)	2,533 (11.2%)	1,314 (6.1%)	2,849 (10.3%)
	BN	-1,109 (-6.7%)	1,603 (9.3%)	1,423 (8.5%)	-1,918 (-11.2%)
	D	-1,378 (-9.8%)	-1,320 (-8.8%)	-1,662 (-10.8%)	-1,604 (-10.4%)
	All	-1,157 (-9.8%)	-181 (-1.7%)	-1,511 (-12.8%)	-534 (-4.9%)
FEB	C	-3,094 (-19%)	-3,055 (-19.9%)	-3,034 (-19.8%)	-2,996 (-19.2%)

* Red boxes indicate that flows under the alternative are more than 5% lower than flows under the baseline; green boxes indicate that flows under the alternative are more than 5% greater than flows under the baseline.

Bay Delta Conservation Plan/California WaterFix RDEIR/SDEIS

B-358

2015 ICF 00139.14

Source: RDEIR/SDEIS, Appendix B.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

**Figure 3
Flow Differences in the Sacramento River
by Water Year Type and Month**

Supplemental Modeling Results for New Alternatives

Table B.7-30. Differences^a (Percent Differences) between Pairs of Model Scenarios in the Sacramento River at Rio Vista, Year-Round

Alternative 4A, ELT: In Delta—Sacramento River at Rio Vista					
Month	Water Year Type	EXISTING CONDITIONS vs. H3, ELT	NAA ELT vs. H3, ELT	EXISTING CONDITIONS vs. H4, ELT	NAA ELT vs. H4, ELT
JAN	W	-1,351 (-1.9%)	-5,751 (-7.8%)	-1,083 (-1.5%)	-5,462 (-7.3%)
	AN	-4,656 (-11.1%)	-4,109 (-9.0%)	-3,691 (-8.0%)	-3,144 (-7.6%)
	BN	-2,635 (-12.0%)	-2,080 (-10.2%)	-2,432 (-11.6%)	-1,867 (-9.2%)
	D	1,259 (8.5%)	-1,396 (-9.3%)	-1,175 (-7.9%)	-1,312 (-8.7%)
	C	-837 (-7.1%)	-1,098 (-9.1%)	-917 (-7.7%)	-1,179 (-9.7%)
	All	-1,959 (-5.3%)	-3,247 (-8.4%)	-1,689 (-4.5%)	-2,978 (-7.2%)
FEB	W	-444 (-0.5%)	-6,718 (-7.7%)	-998 (-1.2%)	-7,272 (-8.3%)
	AN	-1,957 (-3.7%)	-3,029 (-5.6%)	-3,235 (-6.2%)	-4,307 (-8.9%)
	BN	-3,701 (-12.3%)	-3,773 (-12.5%)	-2,624 (-8.7%)	-2,696 (-8.9%)
	D	2,207 (11.0%)	-2,286 (-11.8%)	-2,532 (-12.1%)	-2,331 (-12.1%)
	C	-758 (-6.2%)	-505 (-4.9%)	-766 (-6.4%)	-613 (-5.1%)
	All	-1,672 (-3.8%)	-3,805 (-8.2%)	-1,865 (-4.2%)	-3,988 (-8.6%)
MAR	W	-4,685 (-7.3%)	-3,195 (-10.9%)	-3,278 (-11.1%)	-5,790 (-8.7%)
	AN	-4,854 (-10.4%)	-6,077 (-12.7%)	-3,888 (-8.3%)	-5,111 (-10.7%)
	BN	5,390 (23.7%)	-4,039 (-20.6%)	-3,495 (-16.7%)	-2,144 (-10.9%)
	D	2,885 (16.3%)	-2,570 (-14.0%)	-2,397 (-13.6%)	-2,082 (-11.9%)
	C	-644 (-6%)	-536 (-5.1%)	-778 (-7.2%)	-662 (-6.2%)
	All	-3,843 (-10.2%)	-4,503 (-12.3%)	-2,844 (-7.9%)	-3,504 (-9.5%)
APR	W	5,365 (14%)	-6,844 (-15.1%)	-1,274 (-3.3%)	-1,753 (-4.5%)
	AN	-5,540 (-24.4%)	-5,048 (-22.7%)	-917 (-4%)	-425 (-1.9%)
	BN	-2,808 (-19.2%)	-2,450 (-17.4%)	3,375 (23%)	3,733 (26.1%)
	D	-1,250 (-12.1%)	-1,134 (-11.1%)	704 (6.8%)	-589 (-5.8%)
	C	-382 (-5%)	-237 (-3.2%)	-543 (-7.1%)	-398 (-5.3%)
	All	-3,222 (-15.6%)	-3,294 (-15.5%)	-196 (-0.9%)	-168 (-0.8%)
MAY	W	8,556 (31.7%)	-5,837 (-24.1%)	-4,668 (-17.3%)	-1,955 (-8.1%)
	AN	-4,082 (-24%)	-2,931 (-18.5%)	-655 (-3.9%)	496 (3.1%)
	BN	-2,210 (-20.2%)	-1,148 (-11.6%)	-159 (-1.5%)	903 (9.2%)
	D	-609 (-7.5%)	-314 (-4%)	-512 (-6.3%)	-217 (-2.8%)
	C	-159 (-3%)	-510 (-7%)	-221 (-4.2%)	-571 (-10.1%)
	All	-3,843 (-24.9%)	-2,619 (-18.4%)	-1,748 (-11.3%)	-524 (-3.7%)
JUN	W	-7,622 (-46%)	-4,059 (-31.2%)	-8,393 (-50.7%)	-4,830 (-37.2%)
	AN	-3,222 (-32.6%)	-1,969 (-22.8%)	-4,056 (-41%)	-2,803 (-32.5%)
	BN	-349 (-5%)	-26 (-0.4%)	-1,129 (-11.1%)	-906 (-12.1%)
	D	-14 (-0.2%)	-244 (-3.9%)	-640 (-10.6%)	-870 (-13.9%)
	C	393 (3.1%)	345 (4.3%)	24 (1.2%)	506 (7.7%)
	All	-3,009 (-30.6%)	-1,667 (-19.8%)	-3,666 (-37.2%)	-2,344 (-27.5%)

Bay Delta Conservation Plan/California WaterFix
RDEIR/SDEIS

B-361

2015
ICF 00139.14

Supplemental Modeling Results for New Alternatives

Alternative 4A, ELT: In Delta—Sacramento River at Rio Vista					
Month	Water Year Type	EXISTING CONDITIONS vs. H3, ELT	NAA ELT vs. H3, ELT	EXISTING CONDITIONS vs. H4, ELT	NAA ELT vs. H4, ELT
JUL	W	-2,201 (-19.8%)	-2,283 (-20.4%)	-3,635 (-32.7%)	-3,715 (-33.1%)
	AN	-1,893 (-15.6%)	-2,309 (-18.4%)	-3,337 (-27.5%)	-3,753 (-29.9%)
	BN	-1,907 (-16.3%)	-1,887 (-16.2%)	-2,952 (-25.3%)	-2,932 (-25.1%)
	D	-2,868 (-22.9%)	-1,950 (-19.3%)	-3,635 (-34.9%)	-3,215 (-31.8%)
	C	3,633 (14.7%)	-2,764 (-40.2%)	-3,328 (-43%)	-2,458 (-35.8%)
	All	-3,152 (-21.9%)	-2,219 (-20.9%)	-3,429 (-31.9%)	-3,281 (-31.1%)
AUG	W	-3,911 (-15%)	-3,332 (-16.1%)	-4,218 (-19.6%)	-4,239 (-19.7%)
	AN	-2,332 (-27.3%)	-2,808 (-31.2%)	-3,504 (-41%)	-3,979 (-44.1%)
	BN	-2,225 (-26.6%)	-1,916 (-23.8%)	-2,792 (-27.4%)	-1,983 (-24.6%)
	D	-4,890 (-52.8%)	-3,151 (-41.9%)	-3,631 (-39.2%)	-1,892 (-25.1%)
	C	-680 (-15.5%)	-113 (-3%)	562 (12.8%)	5 (0.1%)
	All	-3,134 (-38.0%)	-2,693 (-31.4%)	-3,121 (-38.8%)	-2,679 (-35.2%)
SEP	W	-361 (-3.4%)	-10,311 (-49.8%)	-335 (-3.1%)	-10,285 (-49.6%)
	AN	-513 (-7.6%)	-6,686 (-51.6%)	1,224 (-10%)	-7,398 (-57.1%)
	BN	-2,770 (-44.1%)	-3,025 (-46.3%)	-3,116 (-49.0%)	-3,371 (-51.6%)
	D	-3,102 (-50.7%)	-1,417 (-32%)	-3,004 (-49.1%)	-1,320 (-29.8%)
	C	568 (15.8%)	195 (6.1%)	425 (11.8%)	-51 (-1.6%)
	All	-1,427 (-19.4%)	-5,104 (-44.3%)	-1,539 (-20.9%)	-5,216 (-47.3%)
OCT	W	-3,775 (-43.3%)	2,923 (37.2%)	-3,637 (-41.7%)	-2,786 (-35.4%)
	AN	-2,527 (-40.9%)	-1,861 (-33.7%)	-2,415 (-39.1%)	-1,749 (-31.7%)
	BN	2,340 (37.4%)	-1,498 (-27.7%)	-2,419 (-38.0%)	-1,577 (-29.1%)
	D	-1,811 (-28.5%)	-1,420 (-27.2%)	-1,468 (-27.6%)	-1,377 (-26.4%)
	C	-1,410 (-27%)	-880 (-18.8%)	-1,493 (-28.7%)	-964 (-20.6%)
	All	-2,504 (-37.6%)	-1,896 (-31.2%)	-2,461 (-36.9%)	-1,852 (-30.6%)
NOV	W	-3,311 (-22.2%)	-4,966 (-28.3%)	-3,632 (-22.9%)	-4,987 (-29%)
	AN	-2,379 (-21%)	-4,148 (-31.7%)	-2,896 (-18.8%)	-3,856 (-29.4%)
	BN	-2,415 (-23.3%)	-3,679 (-38.9%)	-2,499 (-19.4%)	-3,673 (-38.9%)
	D	2,805 (32.1%)	-2,609 (-30.6%)	-3,944 (-33.7%)	-2,758 (-32.2%)
	C	877 (16.6%)	1,010 (13.6%)	-1,041 (-13.9%)	-1,154 (-20.6%)
	All	-3,620 (-24.1%)	-3,498 (-30%)	-2,661 (-24.7%)	-3,545 (-30.4%)
DEC	W	-2,736 (-6.3%)	-3,662 (-8.3%)	-1,504 (-3.5%)	-2,429 (-5.5%)
	AN	-156 (-0.8%)	-1,491 (-7.3%)	22 (0.1%)	-1,313 (-6.4%)
	BN	-105 (-0.7%)	-1,217 (-8.1%)	-183 (-1.3%)	-1,295 (-8.6%)
	D	873 (7.3%)	742 (6.3%)	1,153 (9.6%)	-1,022 (-8.6%)
	C	-760 (-4.3%)	31 (0.4%)	-1,083 (-13.3%)	-294 (-4%)
	All	-1,211 (-5.3%)	-1,743 (-7.5%)	-917 (-4%)	-1,453 (-6.2%)

^a Red boxes indicate that flows under the alternative are more than 5% lower than flows under the baseline; green boxes indicate that flows under the alternative are more than 5% greater than flows under the baseline.

Bay Delta Conservation Plan/California WaterFix
RDEIR/SDEIS

B-362

2015
ICF 00139.14

Source: RDEIR/SDEIS, Appendix B.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

These tables and figures show that most changes are colored in preponderance of flows in low of 5 percent or more compared to the No Action Alternative (especially along the Sacramento River down intakes).¹⁸⁸ The vast majority of differences reported in these two clows across all water year types. Most of the decreases are of 20 to 30 percent or more. Only slight improvements in water year types. (Most San Joaquin River clows at Vernalis between most water year types decrease greater than 5 percent relative to

Reducing clows in the Sacramento River is not a "watercix," certain. This will increase residence time of water in the Bay-Delta Est and to a future without the Tunnels; salinity violations and will well (Figure 4.4.1, DWR and its partners opted not to model residence 4A and the other RDEIR/SDEIS alternatives (2D and 5A). However, "cingerprinting" analyses in interior and western Delta water ways in modeling appendices show replacement of good quality Sacramento River and poorer quality San Joaquin River water, so it is reasonable, modeling, that relative to existing conditions residence times will increase under both Alternatives 4 and 4A (Figures 4.4 and 4.5).

The lower-clowing and more polluted San Joaquin River will make clowing into the western Delta, Franks Tract, and Contra Costa intakes.¹⁹⁰ Meanwhile, better quality Sacramento River water diverted to improve state and federal export water quality, making Delta water

Decreased clows and increased residence times will cause the design migratory and rare cish species to decline, according to Tunnels results. Through-Delta survival rates of the juvenile and smolt life fall-run and late-fall-run ~~inhabited expected rate decrease relative to conditions and the No Action Alternative~~ These cish species are "rare species" beneficial uses as well as "migration of aquatic organisms" clows will decrease the size of critical open water estuarine habitat federally-listed species like Delta smelt and longfin smelt, both of endangered beneficial uses under the current Bay-Delta Water Quality

¹⁸⁸ See also Appendix B, Tables B.7-28 (downstream of north Delta intake Vista), B.7-32 (Delta outflow), and B.7-34 (San Joaquin River at Vernalis).

¹⁸⁹ DWR/SDEIS, Section 4.3.4, p. 4.3.4-67, lines 4-12.

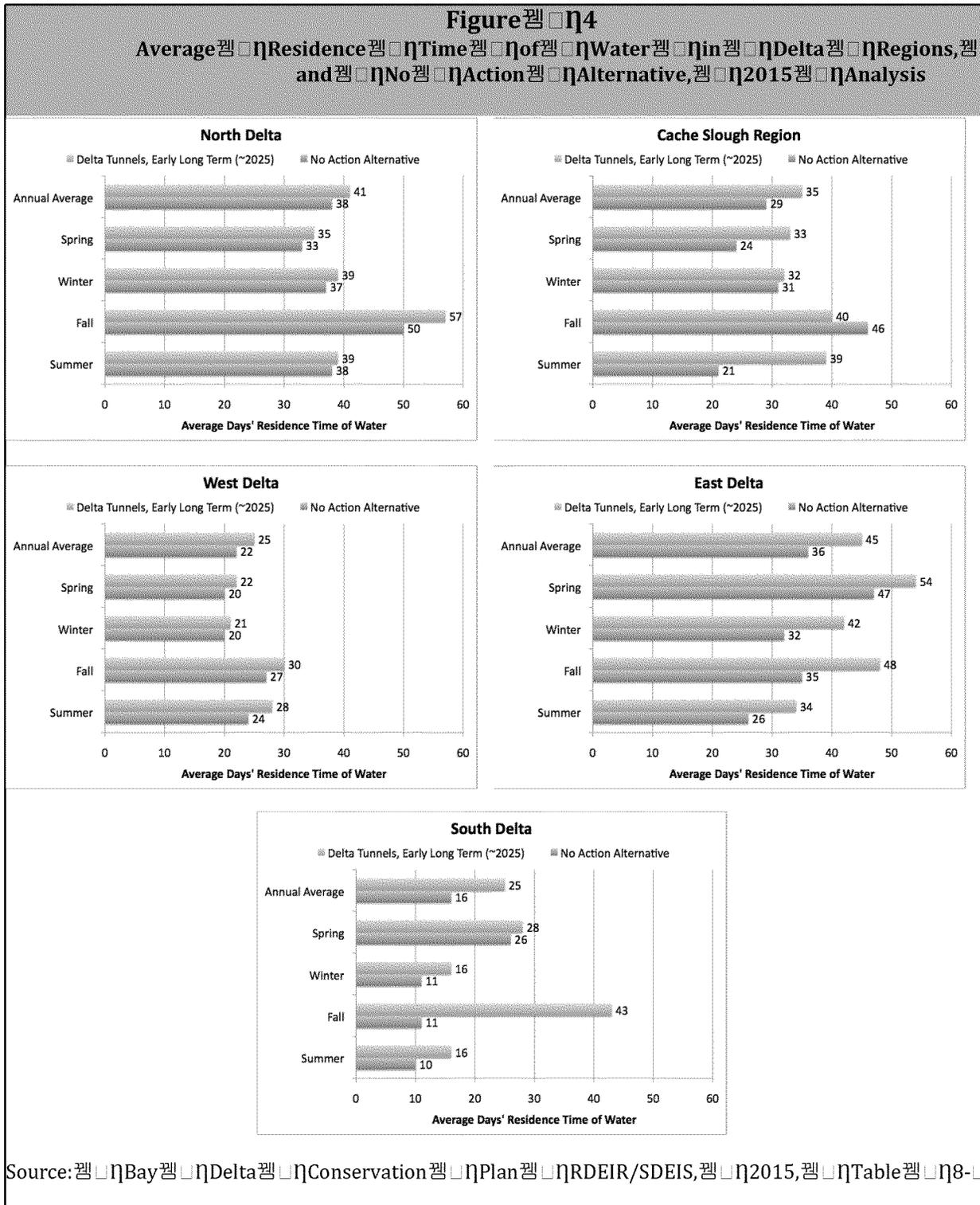
¹⁹⁰ This reasoning is confirmed by source-water fingerprint modeling provided EIS and the 2015 RDEIR/SDEIS. The source-water fingerprint modeling Res Conservation Plan, Draft EIR/EIS, November 2013, Appendix 3D, pp. 147-168, Delta Conservation Plan, Recirculated Draft EIR/Supplemental Draft EIS, Appendix

¹⁹¹ Bay Delta Conservation Plan Draft EIR/EIS, November 2013, Appendix 8 Scenarios H3 and H4, 2013; BDCP/California Water Fix, Recirculated Draft EIR/Appendix B, Section B.4.2 (figures for No Action Alternative, Alternative 4A analyzed by Restore the Delta).

¹⁹² State Water Resources Control Board, Central Valley Regional Water Quality Control Board, San Joaquin Delta Estuary, 13, 2006, p. 9.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

expressed serious concerns about the EIR/EIS Administrative Draft's (AD) outflow "despite the fact that several key scientific evaluations by



**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

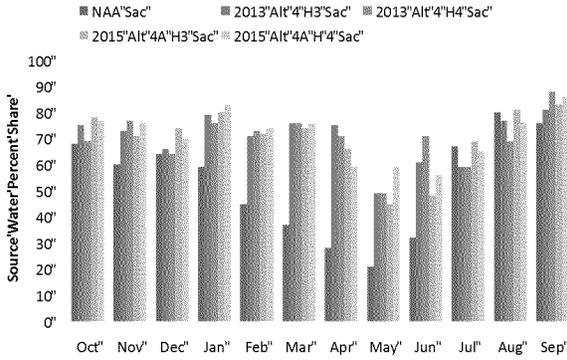
Figure 5

Share of Delta Location River Sources from Fingerprints of Action Alternative, 2013 BDCP Conservation Measure and 2015 Tunnels Project

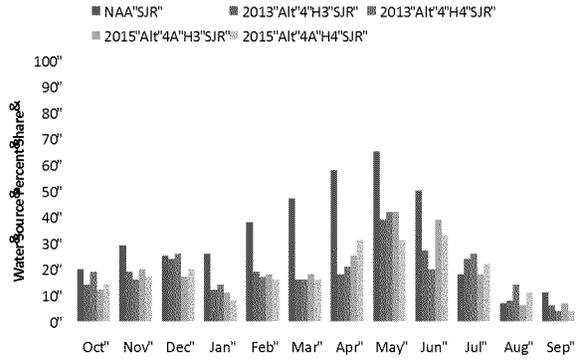
Sacramento River

San Joaquin River

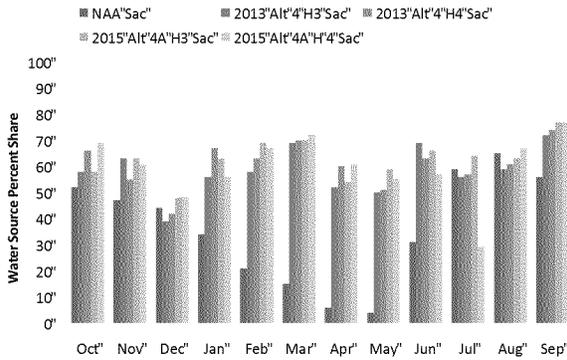
Banks Pumping Plant (SWP)



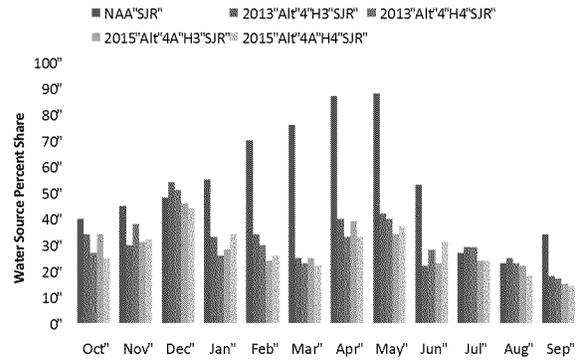
Banks Pumping Plant (SWP)



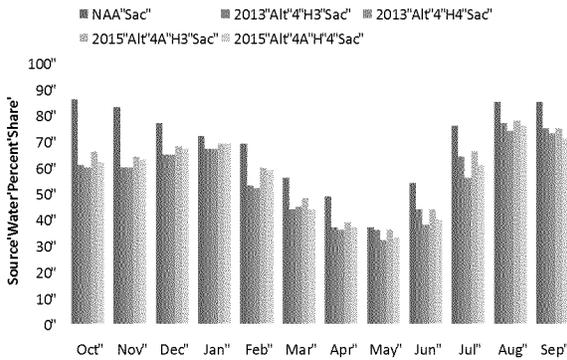
Jones Pumping Plant (CVP)



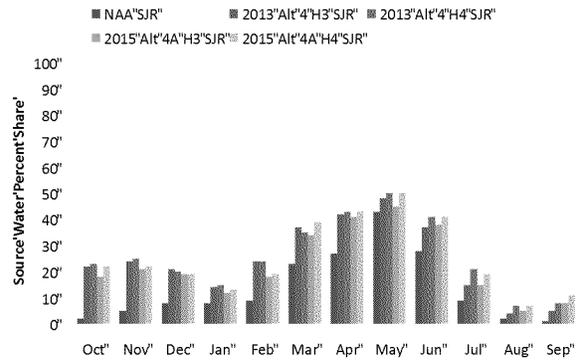
Jones Pumping Plant (CVP)



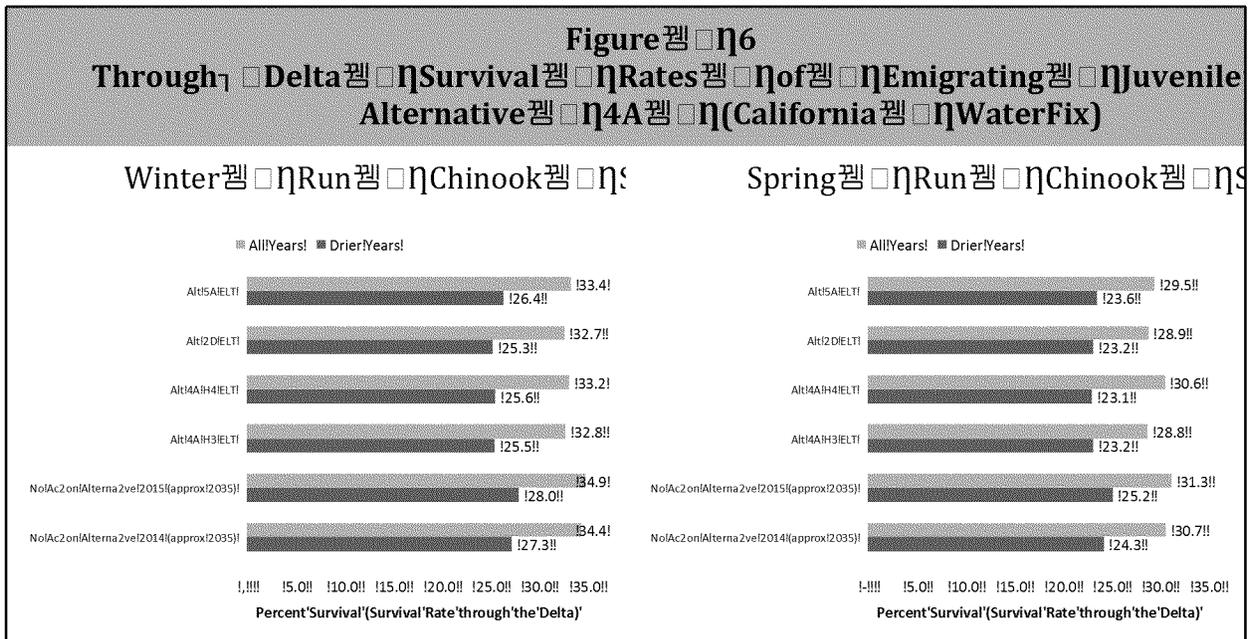
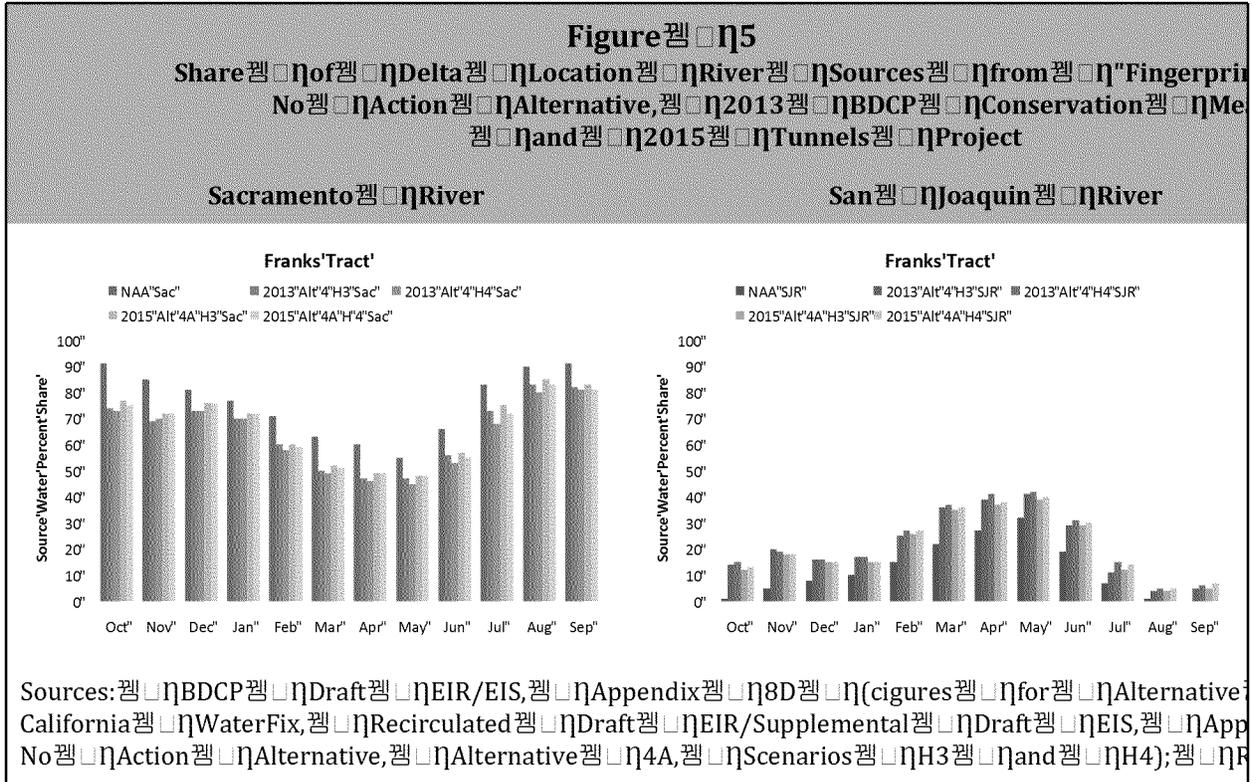
Contra Costa WD at Rock Slough



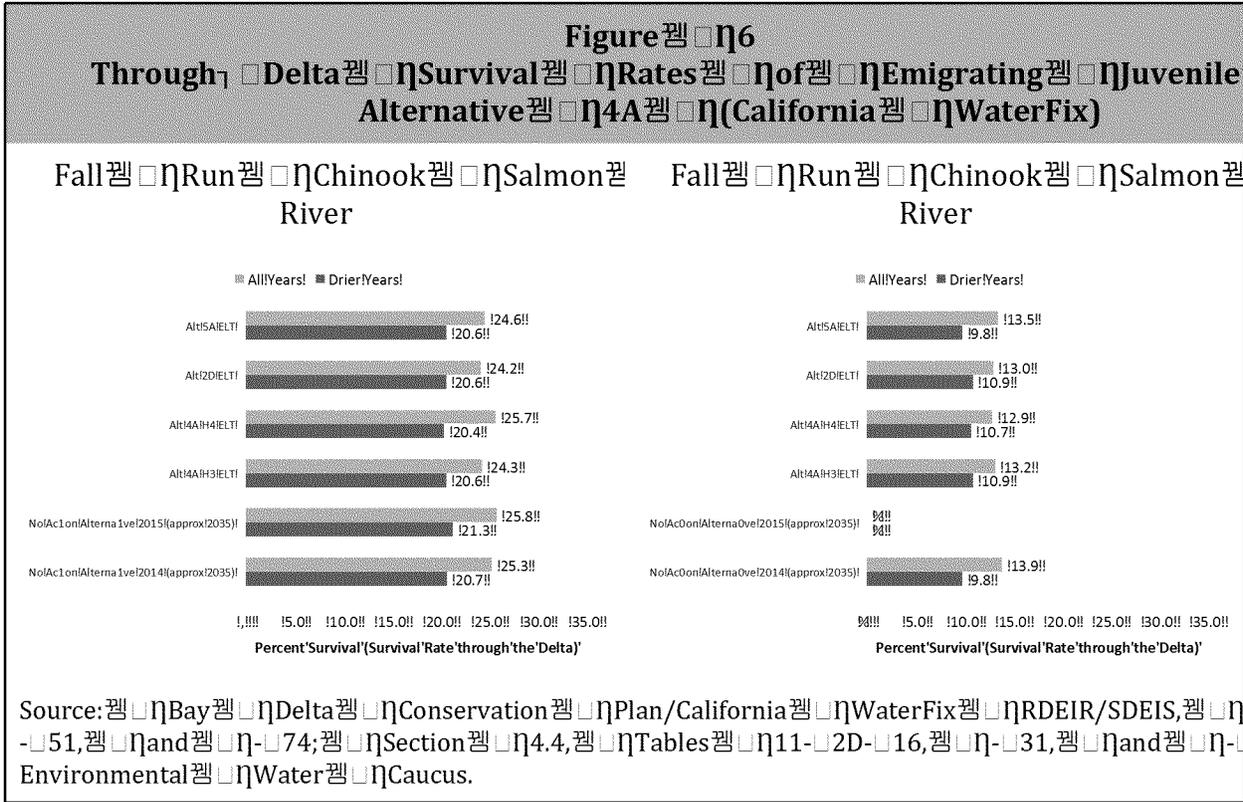
Contra Costa WD at Rock Slough



**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**



**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**



indicate that the flow is necessary to protect aquatic resources and the Tunnels Project's flow regime will violate the beneficial uses of water quality objectives. In order to receive the Section Reclamation must revise the Tunnels Project to ensure that it fulfills uses.

The project increases Delta several pollutant concentrations, resulting in pollutant criteria. Reduced through-Delta flows will stagnate water conditions, water quality to deteriorate badly. RDEIR/SDEIS modeling results reveal degrade water quality for boron, bromide, chloride, electrical conductivity, carbon, nitrate, mercury, pesticides, and (see details below.) Harmful algal expected to worsen under Tunnels Project operational regimes relative as well as existing conditions. While these concentrations are within central Delta locations, as well as Contract Costa Water District's concentrations are expected to increase for export waters of the North Bay Slough, and Jones Pumping Plant and Banks Pumping Plant in both changes compared with existing conditions as well as the factors that most sea level rise and climate change impact

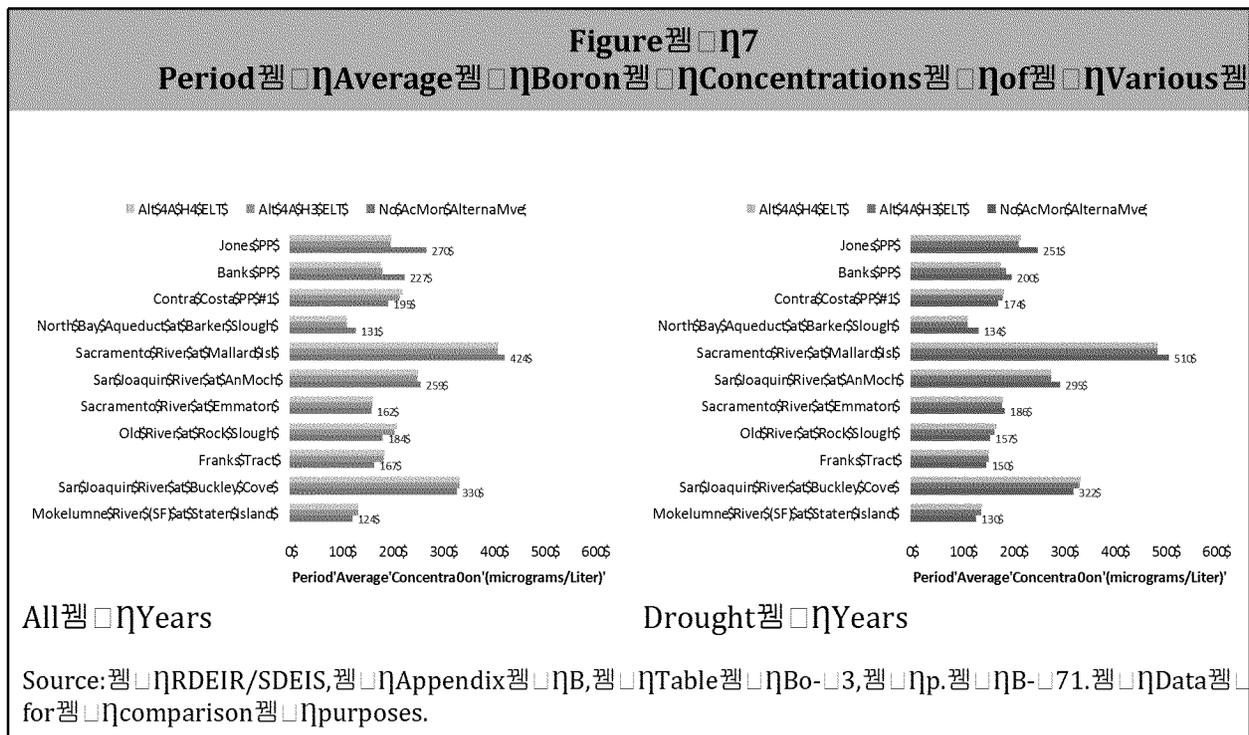
¹⁹³ U.S. EPA, "EPA Comments on Administrative Draft EIR/EIS, III Aquatic Federal Agency Release," p. 4 (July 18, 2013), www.epa.gov/production/ciles/documents/july3-2013-epa-comments-bdcp-adeis.pdf

¹⁹⁴ RDEIR/SDEIS, Appendix B.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Boron

Although the period average concentrations decrease with Tunnels operations River at Emmaton and Contra Costa Water District's Pumping Plant sensitivity) threshold of 500 micrograms per liter ($\mu\text{g/L}$) would see percentage of the time at San Joaquin River at Antioch and The Tunnels Project will increase boron concentrations throughout the Mokelumne River, as well as at Franks Tract and Old River conditions and No Action Alternative the western Delta, boron concentrations Tunnels operation relative to existing conditions and No Action Alternative. September, most months of the year. Finally, boron concentrations in Water District's Pumping Plant No. 1, while boron concentrations decrease at Barker Slough and at Banks and Jones pumping plants projects.



Bromide

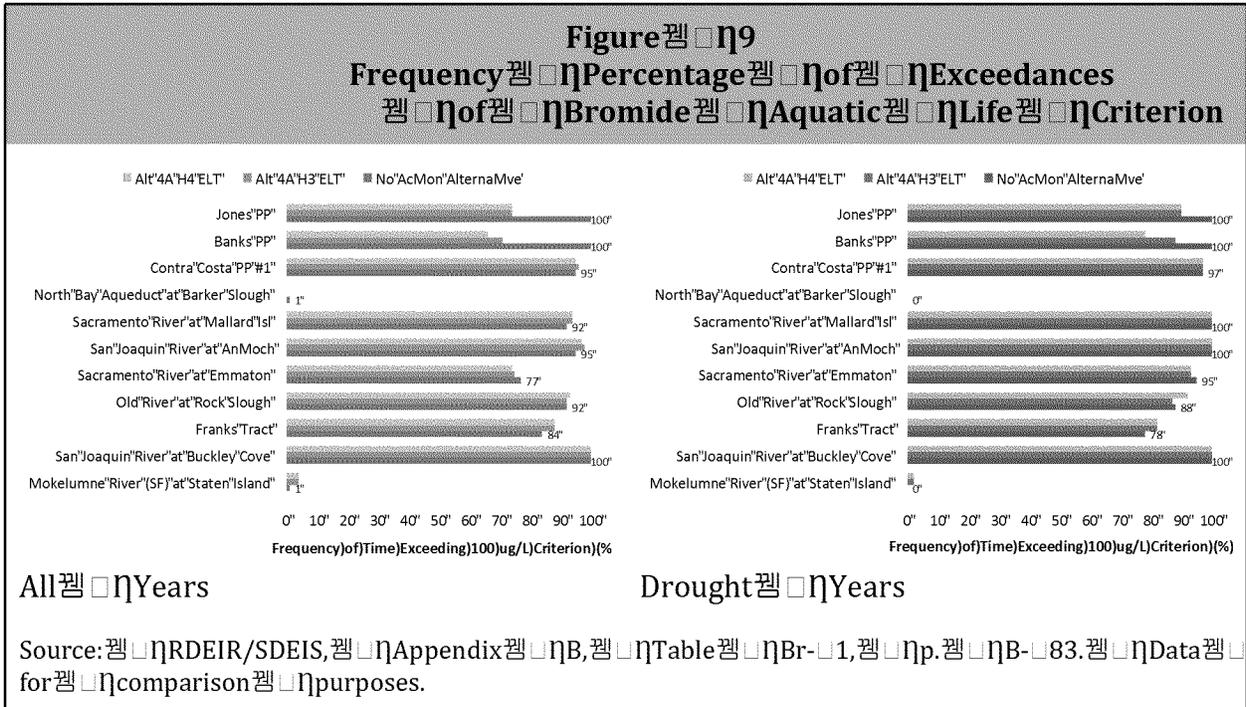
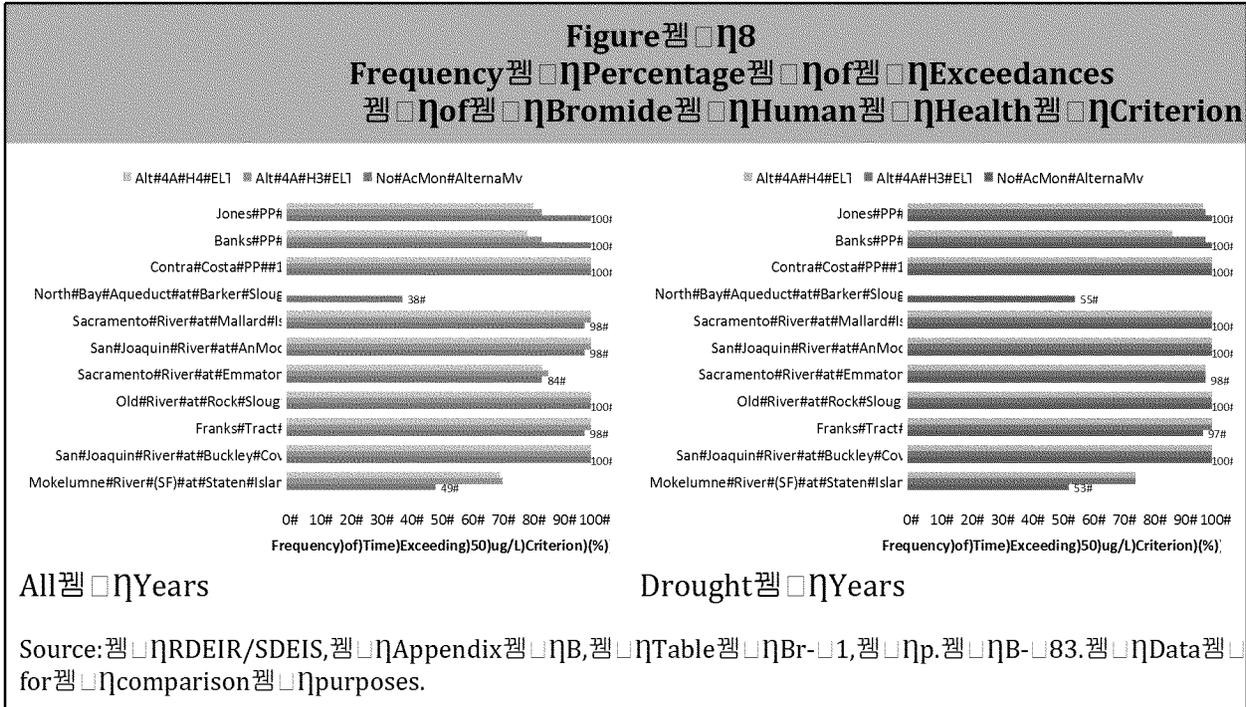
For both human health and aquatic life criteria, the Tunnels Project criteria violations in the interior and western Delta, but would decrease percent of the time at Banks and Jones pumping plants. Western problem for Antioch diversions as well. One method of evaluating concentrations suggests that wet years may see higher concentrations (Table Br-1 and Br-2, p. B-84, p. B-10.)

¹⁹⁵ RDEIR/SDEIS, Appendix B, Table Bo-3, p. B-71.

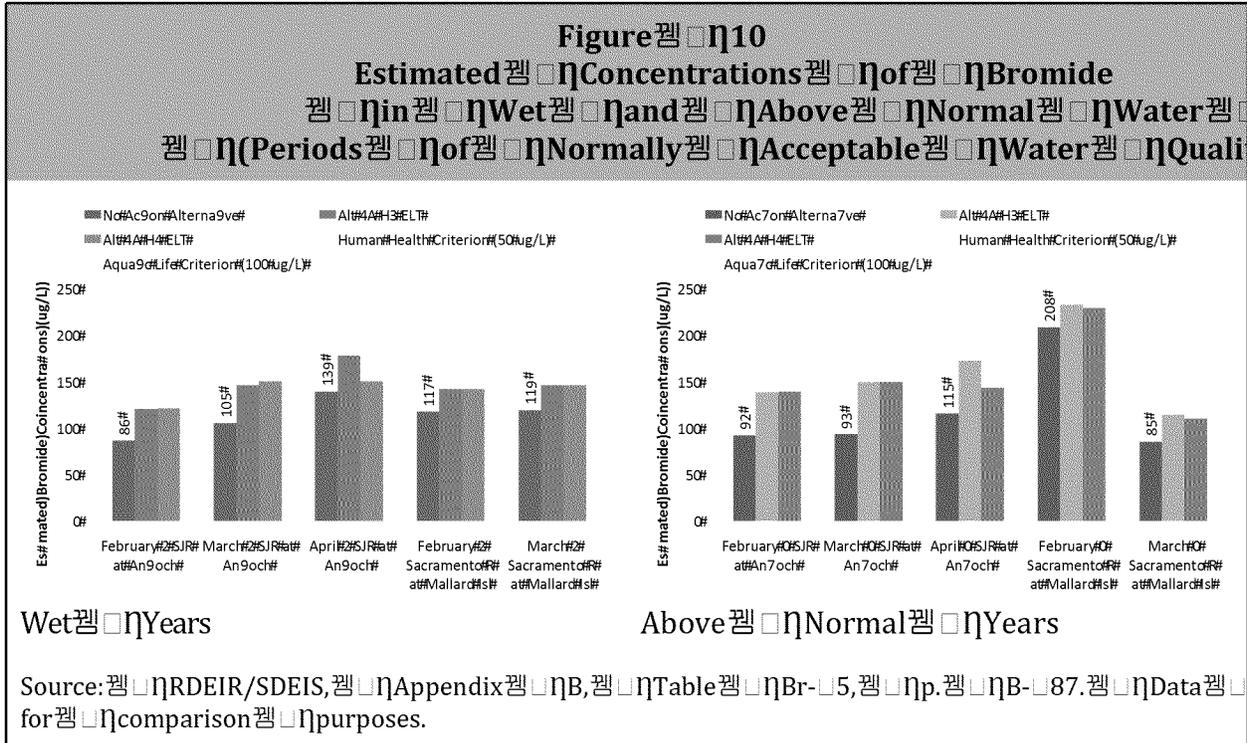
¹⁹⁶ RDEIR/SDEIS, Appendix B, Table Bo-4 and Bo-5, p. B-73 and p. B-74.

¹⁹⁷ RDEIR/SDEIS, Appendix B, Table Br-1 and Table Br-2, p. B-84, p. B-85, and p. B-10.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**



**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**



Chloride

The Mokelumne River south fork at Staten Island sees significant concentrations all year, every year. This is closely influenced by Slough downstream of the north Delta intakes. Other interior and increased chloride concentrations relative to both existing conditions and the Tunnels during March through June (for interior locations) and Sacramento River at Emmaton, San Joaquin River at Antioch and Island.¹⁹⁸

Salinity

The Tunnels Project will more than triple the number of spikes at the Sacramento River downstream of the Tunnels, and along the Point. Outright violations of salinity objectives are expected to more in place. These violations will degrade water quality for Delta agricultural uses. This means that the State Water Resources Control certification regardless of whether it has adequately assessed the water quality.

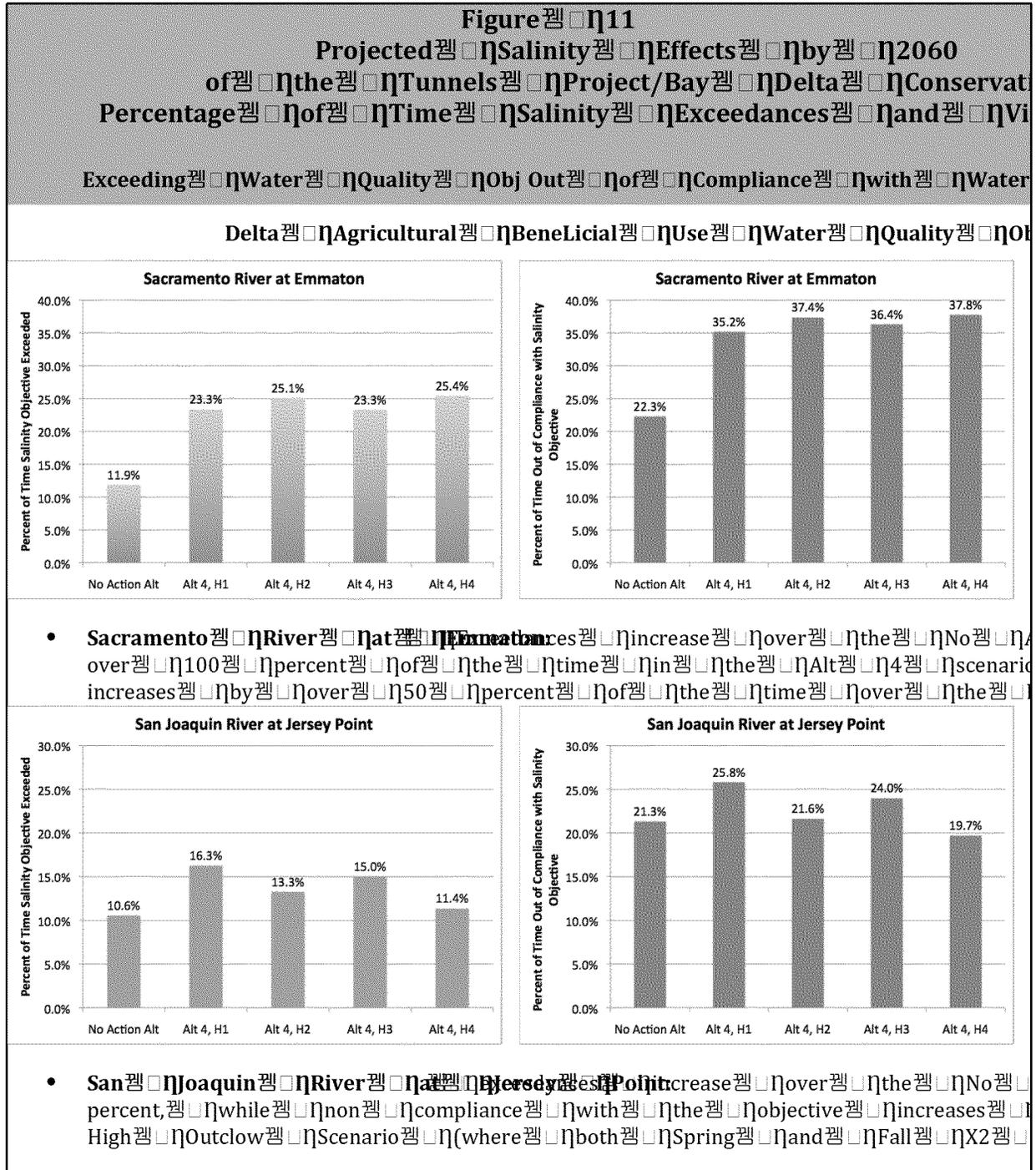
Along the lower Sacramento River, salinity violations will more than quarter of the time that salinity objectives are in effect, up and with the Tunnels Project in place. These conditions will wor

¹⁹⁸ RDEIR/SDEIS, Appendix B, Tables Cl-6 through Cl-9 for two estimation scenarios (H3 and H4), pp. B-93 and B-96.

¹⁹⁹ RDEIR/SDEIS, Appendix B, Table EC-1, p. B-129. “Spikes” here means objective, while compliance with objectives is determined by comparing multi-objective. When the running average is exceeded, a violation is then de

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

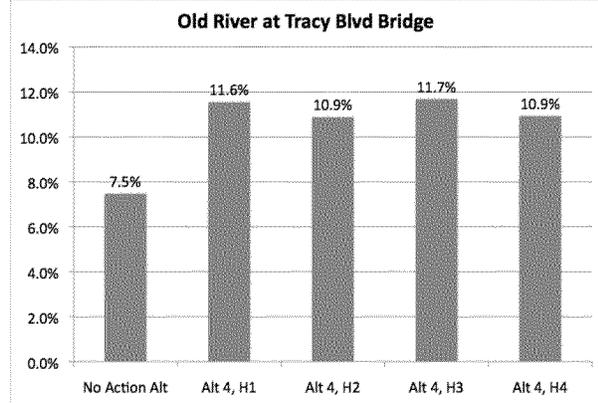
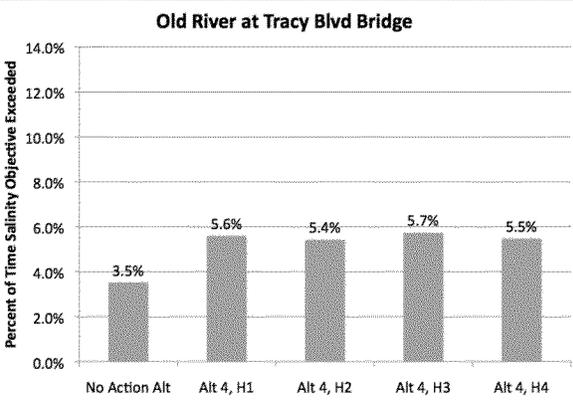
conditions between May and September, especially in drought years (in frequency). Interior Delta salinity will also worsen between March the South Mokelumne River and at San Andreas Landing on the February and June at Prisoners Point (see Figure 11) San Joaquin.



200 RDEIR/SDEIS, Appendix B, Tables EC-8A and EC-8B, pp. B-134 to

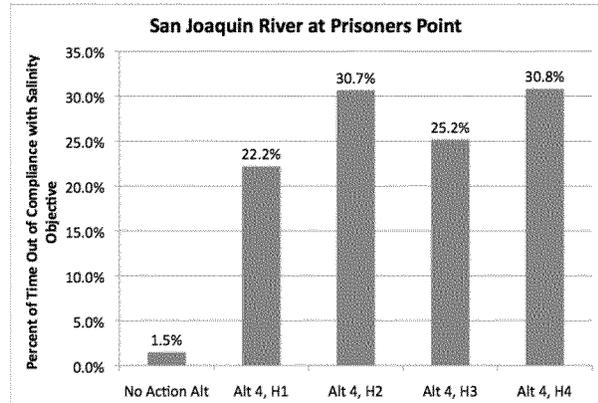
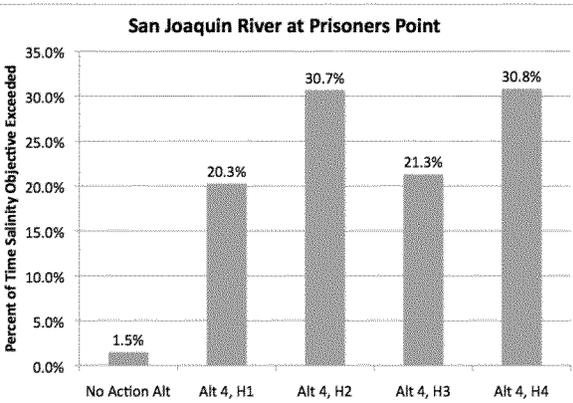
**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

**Figure 11
Projected Salinity Effects by 2060
of the Tunnels Project/Bay Delta Conservation
Percentage of Time Salinity Exceedances and
Exceeding Water Quality Objectives**



- **Old River at Tracy Blvd Bridge:** increase by about two-thirds the Action Alternative. Noncompliance with the objective would increase. These percentages are lower because as shown above (Table high).

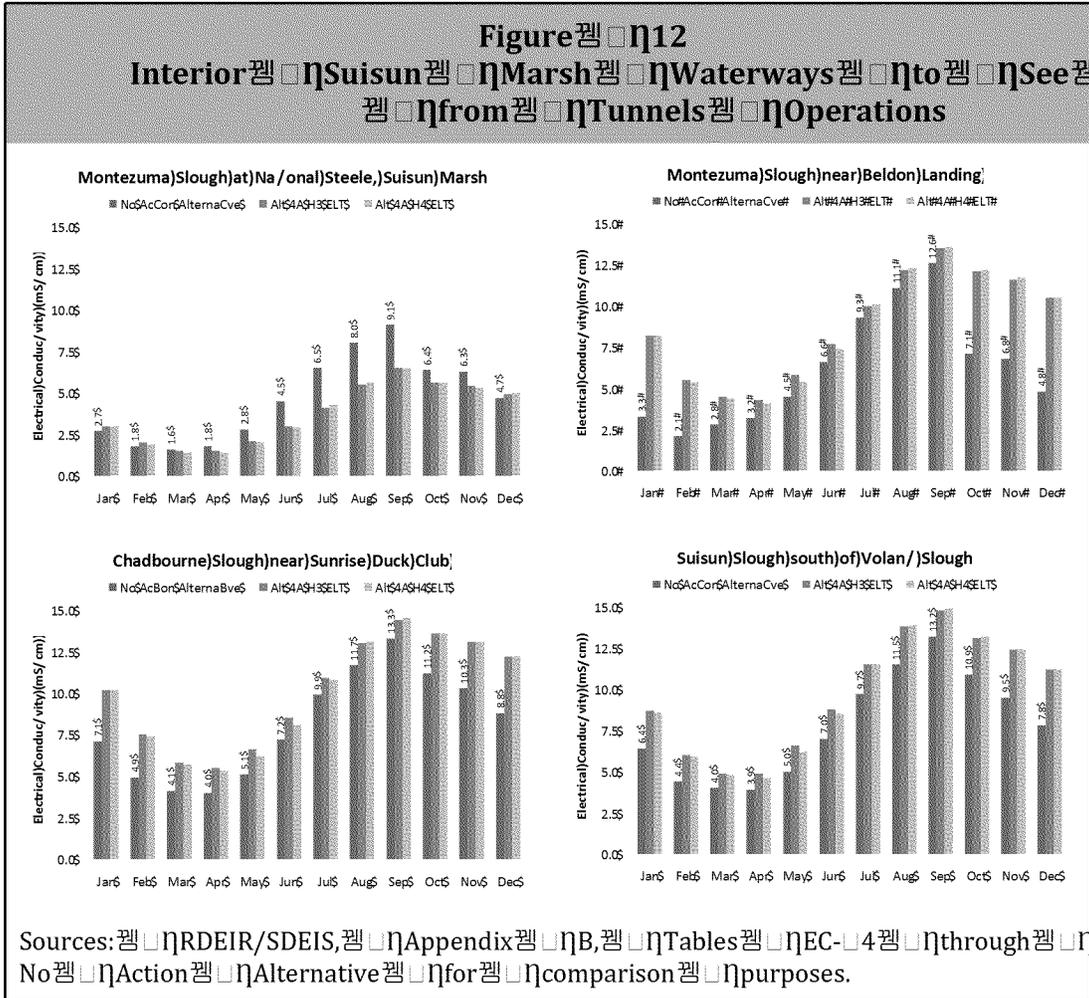
Delta Fish and Wildlife Water Quality Objectives



- **San Joaquin River at Prisoners Point:** of time exceedances sharply—1200 to 1900 percent increase in exceedances and noncompliance. This is a fish and wildlife-related salinity agricultural beneficial use salinity objectives.

Source: Bay Delta Conservation Plan EIR/EIS, Appendix 4, p. Percentage of time is based on a 16-year hydrology modeled compliance” is the number of days that the 30-day running violations of the salinity objective. “Exceeding Water Quality Object monitoring equipment actually registers salinity exceeding the threshold

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**



The Tunnels will be the opposite of a “WaterFix” for Suisun Marsh. Results show that every month’s average salinity will increase about 2 conditions and about 60 percent over future conditions in the B present conditions and 27 percent over future conditions near Sunrise over present conditions and 26 percent over future conditions along Slough.²⁰¹ This altered salinity regime will result in less habitat for native to the Bay-Delta Estuary, as well as affect agricultural crops.

Pesticides

The San Joaquin River is an impaired water body for chlorpyrifos A pesticides (human carcinogens) under the increasing Water Quality water contributed to the Delta will result in more concentrated western Delta water ways from the San Joaquin, and with longer burdens stay longer. The Bay-Delta Estuary will be left with a supplied by the San Joaquin River’s agricultural effluent.

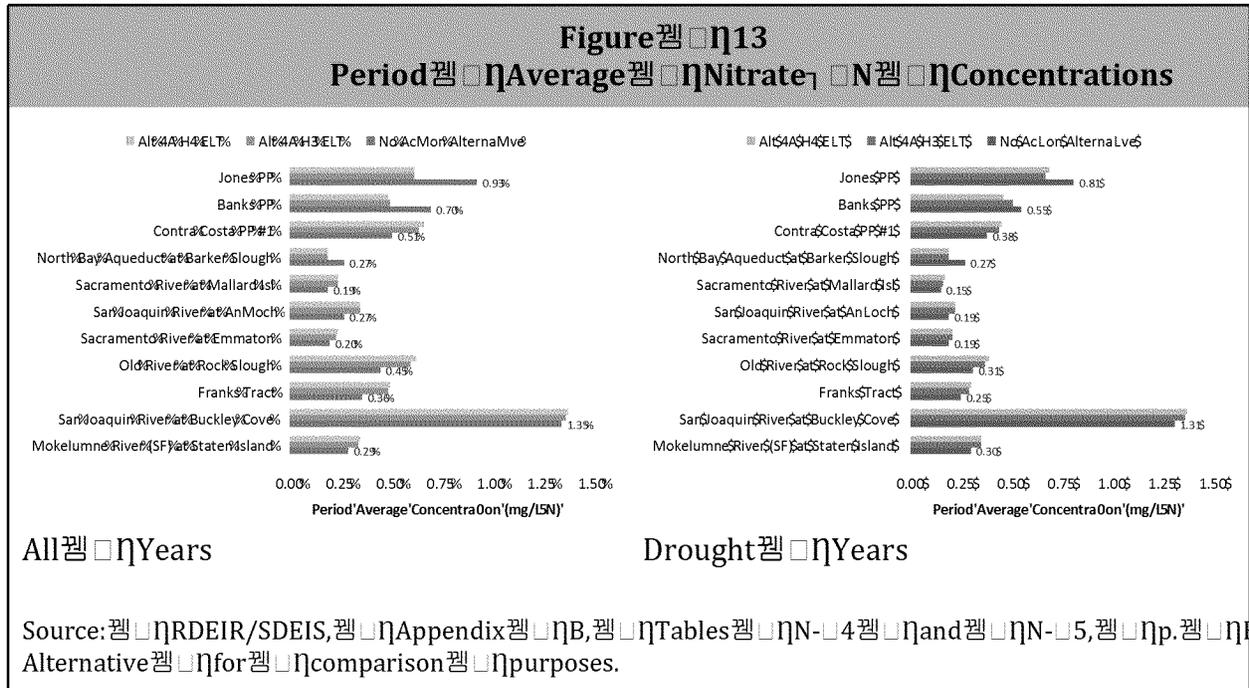
²⁰¹ RDEIR/SDEIS, Appendix B, Tables EC-5, EC-6, and EC-7, pp. B-13 to B-14

²⁰² US EPA, 2010 California California 303(d) List of Water Quality Limits http://gispublic.waterboards.ca.gov/pub/303d/2010_USEPA_approv_303d_List_Final_122311wsrscs.xls

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Nitrates

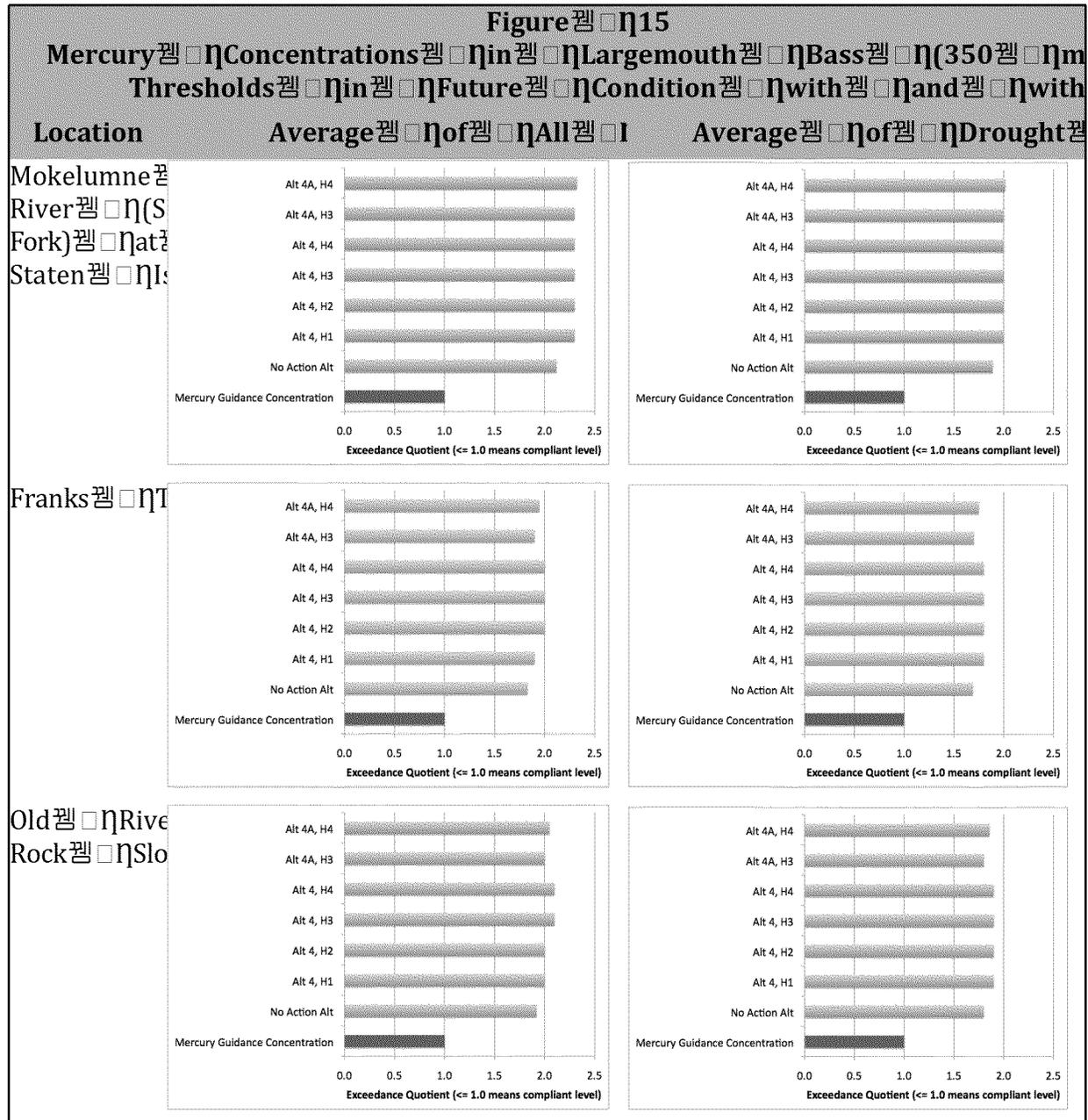
Tunnels Project modeling results indicate increases of nitrates relative to 19 to 34 percent for interior Delta locations in all years (Cove near Stockton). Similar modeling results are shown for the 1 percent increases in salinity (Figure 13). And Contra Costa Water projected to see a 25 percent increase in nitrates. This would water treatment costs for the District. In all of these locations were almost all increases in the range of 10 to 30 percent. concentrations are expected in Tunnels modeling results to decrease Jones and Banks.



203 RDEIR/SDEIS, Appendix B, Tables N-4 and N-5, pp. B-162 and

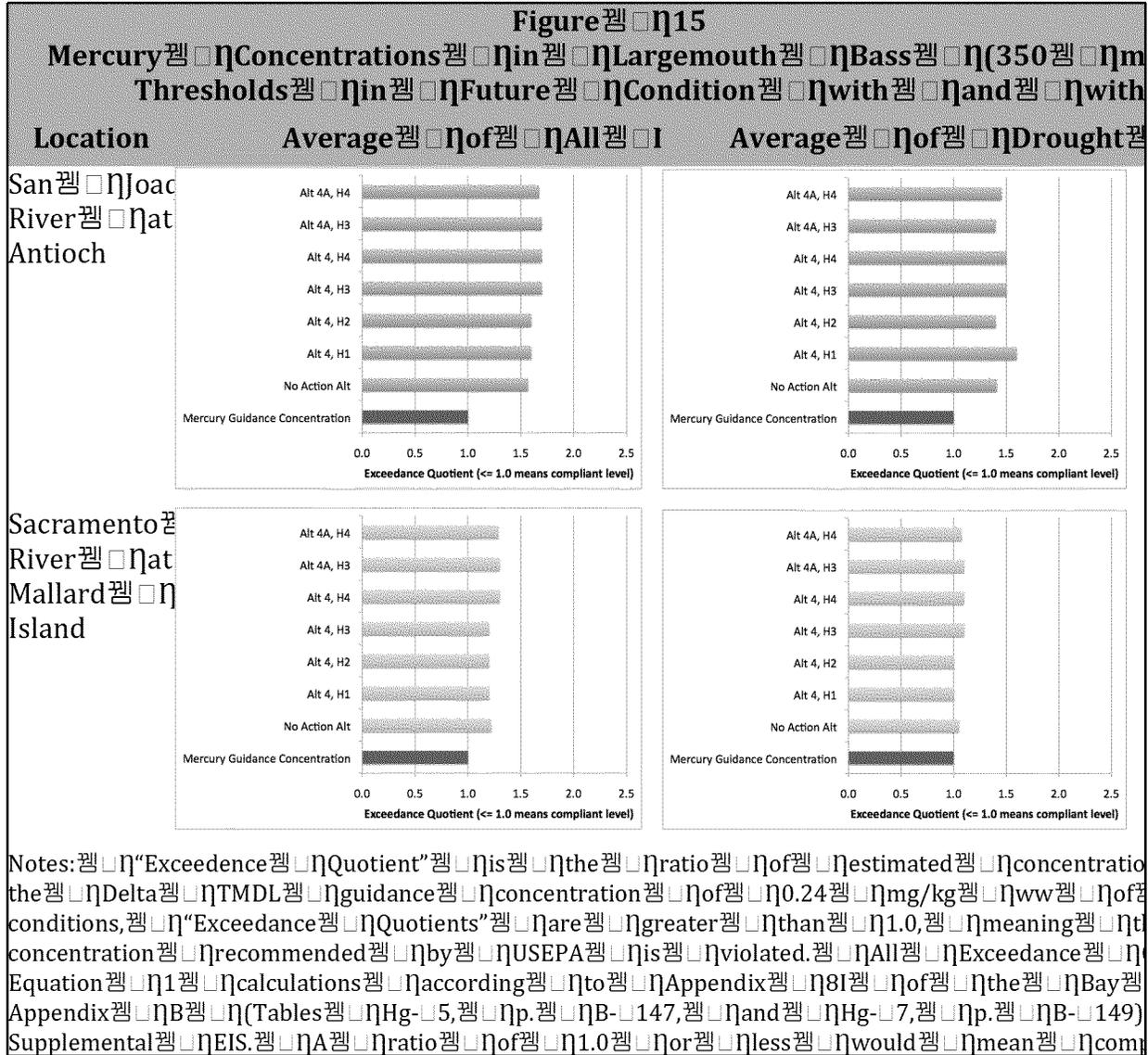
**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

mitigation measures...are meant to provide a list of current research to mitigate mercury methylation.”



²⁰⁷ Charles N. Shapiro, *Swamp, Salt Marsh, and Bay Delta Regional Ecosystem Restoration Implementation Conceptual Model*, prepared for the State Water Resources Control Board, January 24, 2008, pp. 12-13. Accessible at <http://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=6413>.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**



Selenium

The RDEIR/SDEIS errs in assuming decreasing selenium in pads. In water are expected to change only slightly under the Tunnels average selenium concentrations in whole-body sturgeon are expected according to Tunnels Project modeling results in the RDEIR/SDEIS. Figures 16, 17, and 18. In addition, the RDEIR/SDEIS reports that recommended by Presser and Luoma will be exceeded under Tunnel to No Action Alternative conditions. In particular, their "low" threshold would see an exceedance quotient of 1.1 for both operational scenarios relative to the No Action Alternative condition of 0.95 for the higher protective threshold they recommend, the exceedance quotient but would nonetheless increase from 0.59 to about 0.7. For Sacramento average annual exceedance quotients under Tunnels Project conditions the No Action Alternative from 0.88 to 0.99, very close to compliance.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

report the error rate for the modeling here performed, so these since they are so close to 1.0.

The Tunnels Project provides no mitigation method at all, just a research issues to be addressed in the Tunnels project "California Water Fix" premature application to the Corps of Engineers are not real a *prejudging of scientific outcomes*. The Tunnels construction and habitat restoration around the Bay-Delta Estuary, DWR and its partners would have a basis.²¹⁰

Retirement of the drainage impaired lands of the western San Joaquin and again to be the most cost-effective solution to the problem drainage.²¹¹ Land retirement is the best and cheapest option for loads and concentrations reach the Delta, and for sequestering selenium longer into the future. The natural reservoir of selenium has been another 300 years' worth of tainted water. National Environmental Council 2012 report on Bay-Delta sustainable water management cited this stating in part:

Irrigation drainage, contaminated by selenium from those soils, is also in the Joaquin Valley groundwaters. The problem is exacerbated by the recycling water is exported from the delta. While control of selenium releases controls will be effective is not clear because of the selenium reservoir.

²⁰⁸ RDEIR/SDEIS, Appendix B, Table Se-7, p. B-186.

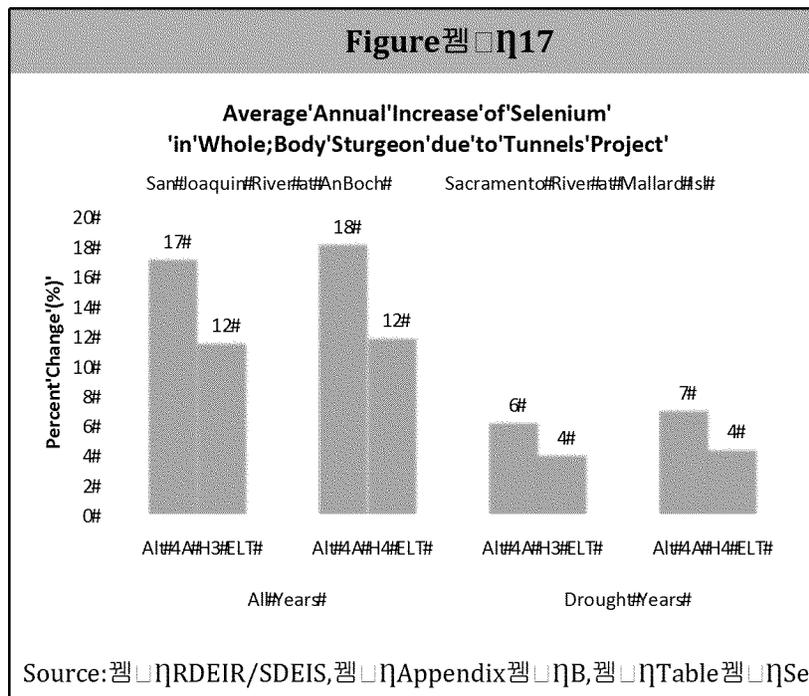
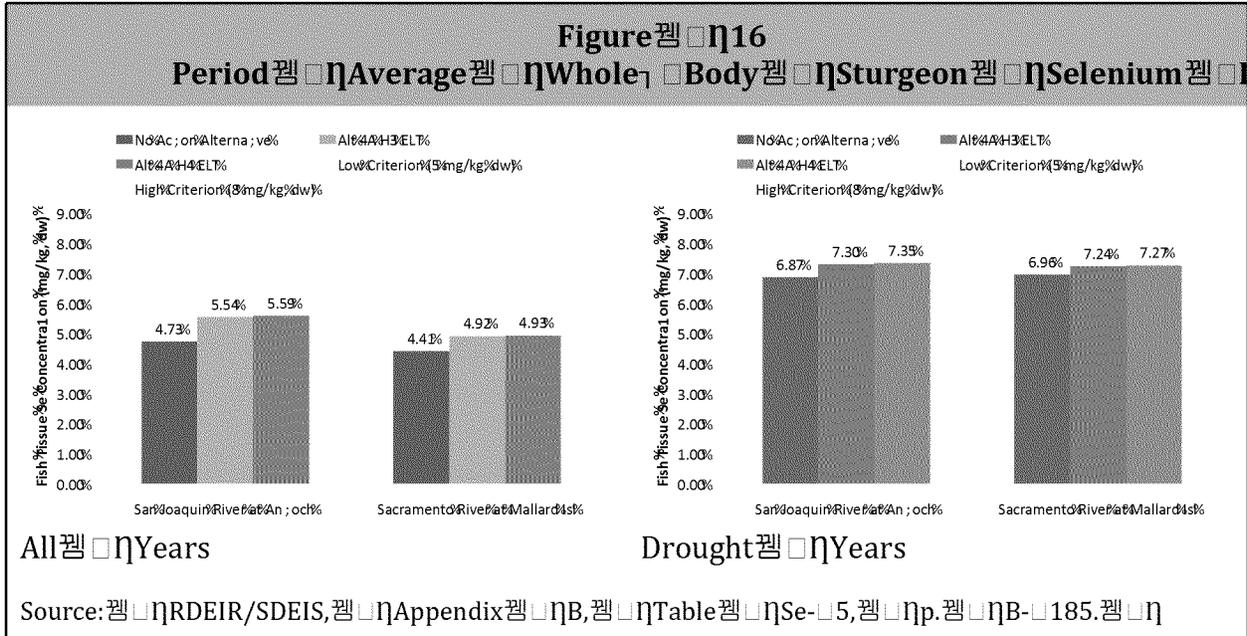
²⁰⁹ These research approaches include: Characterize soil mercury concentrations project basis; sequester MeHg using low-intensity chemical dosing techniques like ferric sulfide or poly-aluminum chloride. These flocculants bind with mercury to flocculate and deposit mercury out of solution; minimize microbial meth wetlands; design restored wetland habitat to enhance photodegradation of MeH sediments with iron to prevent the biogeochemical reactions that methylate sediments (essentially entomb and bury them permanently to keep from mercury). The research "measures" that BDCP proposes do not include basic mercury's effects on these and other cish and aquatic species found in

²¹⁰ Bay Delta Conservation Plan Environmental Impact Report/Environmental Water Quality, p. 8-260, lines 30-35; p. 8-446, lines 39-42, and p. uncertainties associated with site-specific estimates of methylmercury concentrations in source modeling and tissue modeling, the effectiveness of methylmercury evaluated separately for each restoration effort, as part of design and uncertainty and the known potential for methylmercury creation in the Del considered adverse."

²¹¹ Presser, T.S. and S.E. Technical Report 2008 of In 7 Valley Drainage Management for the Western San Joaquin Region, Survey Open File Report 2008-1210. <http://pubs.usgs.gov/of/2008/1210/>.

²¹² T.S. Presser and F. N. B. *Discharges to the San Francisco Ecological Effects of a Proposed United States Drained by Professional 1646, et al. in: T. Presser and J. Recent Salinity and Selenium Science and Mod Estuary*, plus appendices, prepared for the California Water Impact Network, #1, Ecosystem Changes and the Low Salinity Zone, before the State Wa

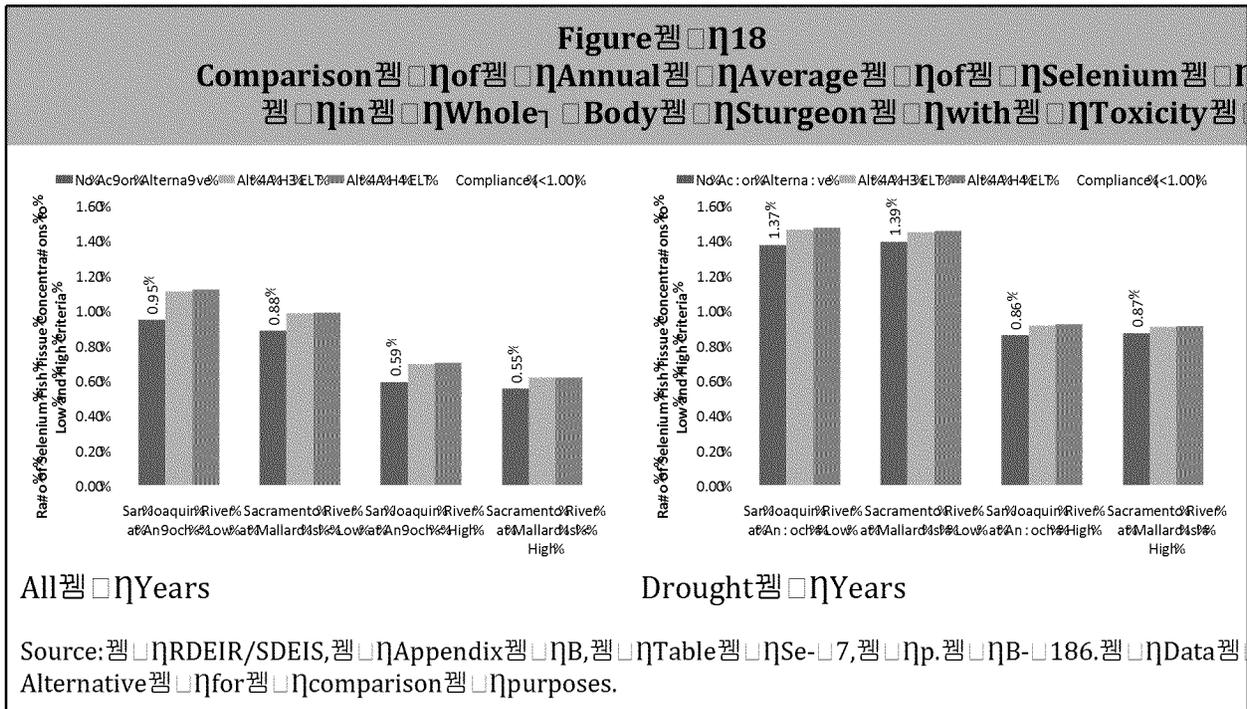
**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**



...Other aspects of water management also could affect selenium contamination. Infrastructure changes in the delta such as construction of an isolated more Sacramento River water to the south, which would allow more water to enter the bay. The solutions to selenium contamination must

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

and the risks from selenium in the bay are an important consideration and affect how San Joaquin River water gets to the bay.



Of course, pending application of Delta waters to irrigate western lands, impaired lands could reduce the need for deliveries to the San Joaquin by up to a million acre feet per year. **This need reduction could be provided by itself, dramatically improved reliability for all other CVP contractors' allocations, without billions for the Tunnels project.**

Harmful Algal Blooms

Algae occur naturally in all fresh and marine water environments. Under normal circumstances, but some "cyanobacteria" (also known as "blue-green algae") can "bloom" or undergo a rapid population boom during nutrient pollution conditions (such as from nitrates, nitrogen and phosphorus). Their sheer biomass can cause, according to the USEPA, complete consumption of all dissolved oxygen in the water, suffocating fish and can produce "cyanotoxins" that pose a significant ecological health and affect taste, odor and safety of drinking water used for recreation and as drinking water supplies.

²¹³ National Research Council, Committee on Sustainable Water and Environmental California Bay-Delta Water and Environmental Management, http://www.nap.edu/catalog.php?record_id=13394

²¹⁴ USEPA Region 9, <http://www.epa.gov/region9/askad/questionandresources/harmfulalgalblooms/toxins>, Version 1, July 2015, <http://www.epa.gov/region9/askad/questionandresources/harmfulalgalblooms/toxins>

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

When these conditions combine, harmful algal blooms can result. The August and September in the Estuary, but drought can increase most common blue-green algae species in Microcystis Bay-Delta 2015 Yearly Microcystis Algal Blooms lasted beyond October into December due to temperatures—water residence time was its what in is deadly to wildlife, human beings, and exposure can cause liver cancer in humans. public health threat.

The Tunnels are likely to increase residence times and slow clove. The recirculated Draft EIR/S this year acknowledges that “it is frequency, magnitude, and geographic Microcystis blooms in the Delta would relative to Existing Conditions” well as compared with the “no action future condition of the Delta without “California WaterFix” Tunnels).

Because it cannot meet water quality standards, the Tunnels Project required Clean Water Act 401 Certification. It needs for a 404 obtain CWA Section 401 certification, the project at issue must including the requirement to meet water quality standards as set by CWA requirements are met, then neither the Regional Water Quality Control SWRCB may grant Section 401 certification.

As implementing U.S. EPA Regulation 401 certification “shall” include statement that there is a reasonable assurance that the activity will not violate applicable water quality standards, great section 401 certification to a project if there is no reasonable assurance standards. The examination of whether a project violates water quality “balancing” factors such as economic considerations— a project neither

²¹⁵ Peggy Lehman, Staff Environmental Scientist, California Department of Water IEP 2015 Workshop, Folsom, California, “Response of Microcystis to Drought,”

²¹⁶ RDEIR/SDEIS, Section 4.3, p. 4.3.4-67.

²¹⁷ 33 U.S.C. § 1341(a)(1), (d). A state agency may also condition, circumstances. See also 33 U.S.C. § 1341(a)(1)-(2), and 33 U.S.C. § 13 certification shall set forth any effluent limitations and other limitations... applicant” complies with certain provisions of the PUDWA. Not the State of California Washington Department of Ecology this includes CWA §303, since §301 PUD No. 1 of Jefferson County v. California Department of Ecology (11).

²¹⁸ In California, the Regional Water Quality Control Boards are responsible certification, unless the project occurs in two or more SWRCB in which SWRCB, “Instructions for Completing the Clean Water Act Section 401 Water Application” (Jan. 2005), centralcoast/water issues/programs/401wqcert/docs/instruct_401_wq_cert_app.pdf.

²¹⁹ The Supreme Court held that the EPA’s interstate consistent

²²⁰ 40 CFR 172.612.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

standards, nor it is the purpose of the confirmed by the 1994 U.S. Supreme Court in *PUD No. 1 of Jefferson County v. PUD (No. 97-1007)*.²²¹ The PUD does not consider the impacts of the project that triggers Section 401 of the Clean Water Act. This project must show it can be built and operated so as to not do, as we show in this letter and its attachments, what the currently-proposed Tunnels Project would do to estuarine water quality and beneficial uses.

The CWA states that water quality standards “shall consist of the waters involved water quality criteria for such waters based upon words, a project that does not comply with the applicable water quality standards when the impact on beneficial uses arises from altered specifically to “restore and maintain physical, chemical, and biological integrity of the waters”—not solely to regulate the U.S. Supreme Court addressed in *PUD No. 1 of Jefferson County v. PUD* that:

²²¹ 40 CFR § 131.11 (“For waters with multiple use designations, the use”); see also 40 CFR § 131.6. As noted by the state Supreme Court, Porter-federal law forbids; that is, California cannot allow for the “balancing uses in a reliance on Porter-Cologne. *Cahner v. Burbank*, 13 Cal. 4th 1033, 1041 (2005).²²² 40 CFR § 131.12.

²²² *PUD No. 1 of Jefferson County v. PUD*, 517 U.S. 228 (2006). The Court held that so long as there is a regulated activity as a PUD, the Clean Water Act applies.

²²³ 33 U.S.C. § 1313(c)(2)(A) (“(i) In addition to the uses to which criteria to protect those uses, water quality standards include an antidegradation standards are “sufficient to maintain existing beneficial uses of navigable waters degradation.” *PUD No. 1 of Jefferson County v. PUD*, 517 U.S. 228, 241 (2006). 33 U.S.C. § 1313(d)(4)(B); 40 CFR § 131.6. EPA in-stream water uses and the level of water quality necessary to protect and protected.” 40 CFR § 131.12.

²²⁴ *PUD No. 1 of Jefferson County v. PUD*, 517 U.S. 228, 241 (2006). 40 CFR § 131.3(b) (U.S. EPA stating that “[w]ater quality standards to protect the designated use,” [emphasis added] indicating that always by themselves protect the designated use). Recognized beneficial uses but are not limited to, agricultural supply (AGR), groundwater recharge (GW (REC-1), Non-Contact Water Recreation (REC-2), Migration of Aquatic Organism Reproduction, and/or Early Development (SPWN), Estuarine Habitat (EST), and Endangered Species (RARE).

²²⁵ 33 U.S.C. § 1251(a). Emphasis added.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

USEPA commented last year on the Bay Delta Conservation Plan "[b]ecause the location of X2 [the estuarine habitat water quality freshwater flow through the Delta, the proposed project would have parameter, yet the Draft EIS does not analyze each alternative's of this relationship. The Bay-Delta Water Quality Control Plan's estuarine objective will likely be violated by the Tunnels Project as well. EIR/EIS there is no modeling of how changes in X2, the Delta objective may affect a variety of estuarine species. X2, which the estuary's low salinity zone relative to the Golden Gate, was migrate upstream under the Tunnels' influence relative to existing Alternative.²⁴⁰ The modeled upstream migration of X2 means that species will shrink, especially relative to the No Action Alternative and X2 are negatively correlated: when X2 moves further from typically decrease as the size of the Low Salinity Zone decrease exceptions.²⁴¹ This apparently remains true of the RDEIR/SDEIS, in which conducted.

The State Water Board has indicated tentative interest in designating beneficial use statewide, including the [Organic Deltas](#) and others would welcome such a beneficial use designation in the Delta as well as sensitive ecological and estuarine beneficial uses will also protect such use. Humans are connected to these other beneficial uses, no less.

The Tunnels Project will also violate numerous pollutant criteria mer consequences for public health and vitality of the region's ecosystem economic sectors like tourism, recreation, agriculture, and subsistence. The Tunnels Project will further violate water quality standards, precluding the Control Board from certifying the project under Clean Water Act.

In summary: implementation of the Tunnels Project will require a Army Corps of Engineers, which it cannot receive unless the state certification. The certification in turn cannot be legally issued unless rather than the individual discharge mandating the 404 permit) meeting which includes meeting beneficial uses designed to protect Delta species. The Tunnels Project will fail across the board; we provide more detail in this letter.

²³⁹ USEPA, "Draft Environmental Impact Statement for the Bay Delta Conservation Plan, California (CEQ# 20130365), August 26, 2014, http://www.epa.gov/epaaccessibility/DocServer/8-26-14_EPA_Cmntnt_on_BDCP.pdf?docID=95.

²⁴⁰ See Figure 7, p. 66 of Environmental Water Caucus comments on 2014; accessible <http://online.cdair.ca.gov/reports/bdpccomments6-11-2014>.

²⁴¹ Panel Summary Report on Workshop on Delta Outflows and Related online <http://delatocouncil.ca.gov/sites/default/files/documents/ciles/Delta-Outflows-Report-Final-2014-05-05.pdf>. This report identifies "key papers" in which the relationships species abundances are anchored.

²⁴² Email from Esther Tracy of State Water Resources Control Board, Ventura, Clean Water Action, "State Water Resources Control Board Beneficial Uses," to Colin Bailey of Environmental Justice Coalition for Water, thence to Environmental Water Caucus consultant. Tracy's message primarily concerns subsistence fishing by Ca

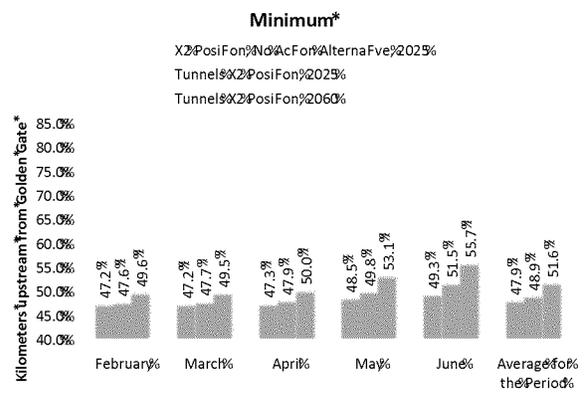
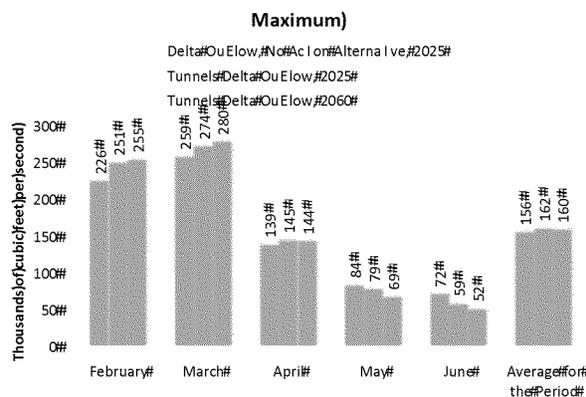
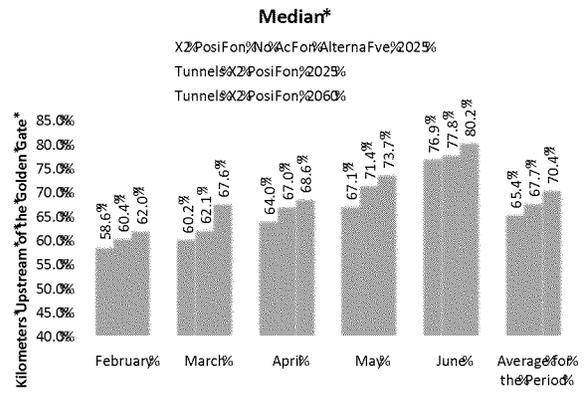
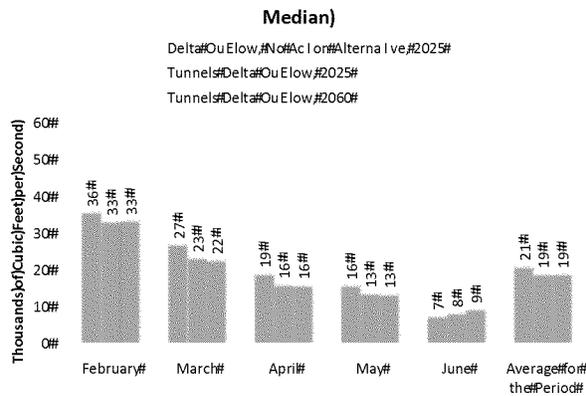
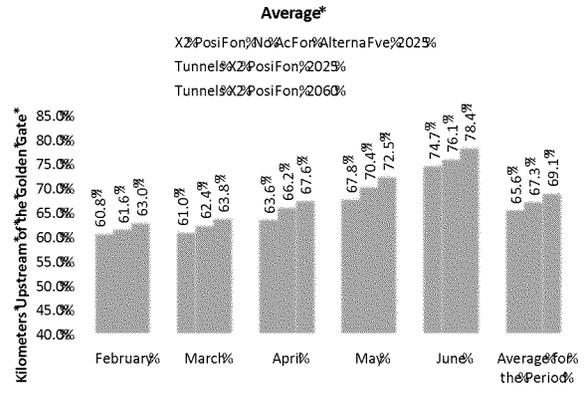
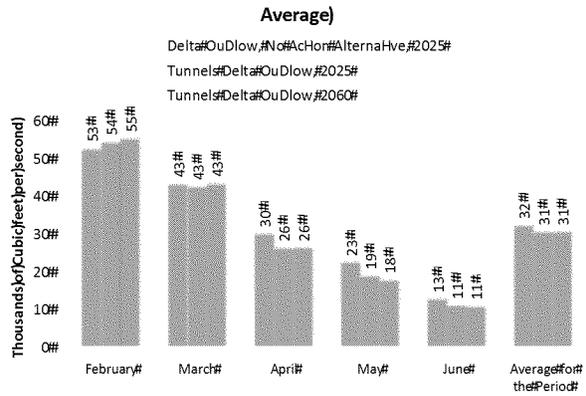
Environmental Water Caucus Comments on Recirculated Draft EIR/Supplemental Draft EIS for Bay Delta Conservation Plan and Tunnels Project

Figure 5.C.19

Delta Outflow to Decrease in Future Scenarios with Average X2 Position to Move Eastward with Tu

Delta Outflow

X2 Position



Sources: Bay Delta Conservation Plan, Appendix 5.C, Attachment 5.C.A-42, 5.C.A-The Delta Average Value is skewed somewhat by the low X2 years. The median is the value where half and half are less. The Delta outflow and X2 distance of X2 from the Golden Gate.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

There is no defensible anti-degradation analysis in the State Water Board's regulatory authority is the Antidegradation Policy which is included in the Basin Plans as an appendix. However, RDEIR/SDEIS fail to discuss or analyze constituents which will degrade documents do not evaluate whether the designated beneficial use is Clean Water Act compliance.

Section 101(a) of the Clean Water Act (CWA), the basis for the objective of the Act is to "restore and maintain the chemical, nation's waters." Section 303(d)(4) of the CWA carries this further, for states to satisfy the antidegradation regulations at 40 CFR § water quality. These regulations (40 CFR § 131.12(a)) describe the and dictate that states must adopt both a policy at least as implementing procedures.

The CWA regulates the identified beneficial uses. The Federal Policy, as required in 40 CFR 131.12 states, "The antidegradation methods shall, at a minimum, be consistent with the following: the level of water quality necessary to protect the existing uses. The Delta is classified as a Tier II, "high quality," waterbody 9's guidance on implementing antidegradation policy states, "All actions quality in Tier II waters require a determination that existing uses protected."

California's antidegradation policy is described in the State Antidegradation Administrative Procedures Update 90-004, 2 July 1990 ("APU 90-004" ("Region IX Guidance"), as well as Water Quality Order 86-17.

California's Antidegradation Policy (Resolution 68-16) requires that:

- Existing high quality water will be maintained until it has change will be with the maximum beneficial to the people
- The change will not unreasonably affect present and anticipated
- The change will not result in water quality less than prescribed
- Any activity which produces a waste or increased volume or to meet waste discharge requirements using the best practicable discharge necessary to assure that neither pollution nor nuisance water quality with maximum beneficial to the people of the

While California's Antidegradation Policy requires that, "[t]he change will present and anticipated beneficial uses and the change will not prescribed in the policies," the Federal Antidegradation Policy requires existing uses will be fully maintained and protected."

²⁴³ EPA, Region 9, Guidance on Implementing the Antidegradation Provisions

²⁴⁴ "Guidance on Implementing the Antidegradation Provisions of 40 CFR 131.12

²⁴⁵ Draft BDCP EIR/EIS, 2013, page 8-408.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

The Tunnels Project will reduce clows and result in poorer water constituents, including boron, bromide, chloride, electrical conductivity, nitrate, some pesticides, mercury and selenium. The Delta is currently impaired constituents that will increase under the proposed alternative. Several are detailed in Attachment 5 where degradation is expected should be constructed and operated.

Even if DWR and the Bureau of Reclamation provide an adequate Tunnels Project, the point remains that they cannot move forward with State Water Resources Control Board if any water quality standards antidegradation analysis is supposed to ensure they comply with any standards, but there is clear evidence that cannot and will not.

Water Quality, Real-Time Operations, and Adaptive Management

Tunnels Project Operational modeling criteria scenarios could prejudice objectives for the Bay Delta Estuary from the State Water Resources wholly implicit assumption through the RDEIR/SDEIS is that any one require wholesale revision to how water quality is regulated in the Tunnels Project to move forward. The setting sections of Channel water supply, surface water, groundwater, and water quality) contain no water quality objectives as they apply to flow and operational action facilities in the Delta. The Draft EIR/EIS Executive Summary last titling one section “New Rules for North Delta Diversions,” but do no mention of the regulatory regime change that would apparently Board.²⁴⁶ This year, the RDEIR/SDEIS announces “proposed new flow Delta SWP and CVP export facilities, and the proposed new head

Such changes to Delta clows and hydrodynamics must be evaluated the State Water Resources Control Board, the only state body national standards. ~~We~~ **are concerned that the Tunnels Project proponents hope process by making Tunnels Operational criteria seem inevitable and neither, and must be the subject of careful and critical review update process, before the Tunnels Project receives permit approvals simply: water quality policy must come before plumbing decisions in the Bay Delta Estuary, and the Delta's economy and communities**

Further complicating this picture is the role and regulation by [RTOs]. ~~Real~~ time operational decisions:

are expected to be needed during at least some part of the year north and south Delta diversion facilities.”

²⁴⁶ Bay Delta Conservation Plan, Draft EIR/EIS, ~~Section 4.1.4~~ **Section 4.1.4** “New Rules for North Delta Diversions,” pp. ES-52 to ES-53.

²⁴⁷ RDEIR/SDEIS, Section 4.1, pp. 4.1-11 through 4.1-13.

²⁴⁸ This stance is also consistent with the Delta Protection Act of

²⁴⁹ ~~Draft EIR/SDEIS, Section 4.1-13~~, lines 17-18.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Table 5: Comparison of Alternatives' Operational Criteria		
Indicator	Alternative 4A Criteria	Alternative 4 Criteria
	New Criteria Included in Alternative 4A	
North Delta Bypass Flows	Initial Pulse Operations plus Initial Low-level pumping of River flow such that bypass flow is no more than 300 cfs intake. If the initial pulse begins pulse criteria for May go into Dec 1. On Dec 1, the Level in the Draft EIR/EIS apply unless a second pulse occurs, the protective operation as the Post-pulse Criteria (species by remain downstream of the North Delta October, November: bypass clows diverting at the North Delta intake July, August, September: bypass before diverting at the North Delta December through June: post-pulse operations will not exceed Level 3 specific criteria have been met Level 3 as decided in the SEIS. If those criteria are met, decided in Table 3.4.1-2 in the specific criteria for transitioning between pulse protection, Level 1, Level 2 operations, will be developed and cish monitoring and hydrologic/behavior upstream of and in the Delta. adjustments are expected to be supply and/or migratory conditions of real-time adjustments to the pumpi Delta diversions. These adjustments under Real Time Operations (RTO).	Initial Pulse Operations: see Bay Delta Conservation Plan. October, November: Flows will cfs. July through September: Flows 5,000 cfs December through June: Variab in Table 3.4.1-2.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Table 5: Comparison of Alternatives' Operational Criteria

Indicator	Alternative 4A Criteria	Alternative 4 Criteria
South Delta operations	<p>1. October, November: No south the D-1641 San Joaquin River and Middle River (OMR) clow weeks prior to pulse, and cfs in November after pulse. December: OMR clows will an average of -5,000 cfs when Wilkins Slough pulse triggers, and than an average of -2,000 cfs action triggers. No OMR clow Sacramento River pulse, or delta triggers.</p> <p>15. January, OMR clows will negative than an average of -3,500 cfs during above-normal during below-normal to critical years in January of dry and critical years.</p> <p>16. May, OMR clows will not an average of 0 cfs during or -3,500 cfs during below-normal -3,000 cfs during critical years.</p> <p>April, May: Allowable OMR clow measured at Vernalis, and a linear relationship. If Vernalis cfs, OMR clows will not be cfs. If Vernalis is 6,000 cfs, than +1,000 cfs. If Vernalis is will be at least 1,000 cfs. OMR clows will be at least 15,000 cfs, OMR clows will be: Vernalis is at or exceeds 30,000 at least 6,000 cfs.</p> <p>June: Similar to April, all gaged clow measured at Vernalis is less than 3,500 cfs, OMR negative than -3,500 cfs. If V and up to 10,000 cfs, OMR Vernalis exceeds 10,000 cfs and up clows will be at least +1,000 15,000 cfs, OMR clows will be:</p>	None specified.
	<p>July, August, September: No</p>	

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Table 5: Comparison of Alternatives' Operational Criteria		
Indicator	Alternative 4A Criteria	Alternative 4 Criteria
Head of River Gate operations	<p>October 1-November 15th: Management to protect the D-1641 pulse: upstream migrating adult Fall-Run HORB will be closed approximately immediately before and after the will be fully closed during the information suggests alternative operator for cish.</p> <p>January: When salmon fry are based on real time monitoring), criterion will be to close the purposes of water quality, stage, considerations.</p> <p>February-June 15th: Initial operating to close the gate subject to F quality, stage, and cloud control agencies will actively explore the reliable juvenile salmonid tracking may enable shifting to a more operating criterion based on the covered cishes.</p> <p>June 16 to September 30, will be open.</p>	<p>December, June 16 to September during the days in November the D-1641 pulse: Operable All other months: Operable partially or completely closed operations, to minimize entrain outmigrant juvenile salmonids manage San Joaquin River determining the criteria for closure of the Head of and wildlife agencies goal of Old River gate closed from February 1 through the Head of Old River subject to real-time operation of water quality, stage, and considerations.</p> <p>Note to Reader: to issue BDCP document, operational guidelines developed for use by project implementing these operational</p>
Rio Vista minimum flow standard	<p>January through August: clows will September through December: clows</p>	<p>None specified.</p>

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Table 5: Comparison of Alternatives' Operational Criteria		
Indicator	Alternative 4A Criteria	Alternative 4 Criteria
Spring outflow	<p>March, April, May: To ensure smelt abundance, initial operations March--May average Delta outflow requirements of Scenario H3, which D-1641 standards, and Scenario H4 scaled to Table 3-24 in Chapter Draft EIR/EIS. Over the course of the long-term smelt indices based upon the 1980-2011 trend relative to winter-spring outflow conditions, evaluate the effect of operations to evaluate positive cohort over cohort growth). Adjustments to the criteria outflow targets may be made using Management Process and the best information available regarding all factors long-term smelt abundance.</p>	<p>March through May: As determined through decision tree. If at the conveyance, the Permit Oversight determines that the best resulting from structured hypothesis developed through a collaborative program indicates that spring needed to achieve the long-term abundance objective, the following operations would be implemented decision tree. The high outflow scaled to the 90% river index for the water summarized in the separate March-May outflow targets using outflow supplementation through an approved water limiting CVP and SWP Delta of 1,500 cfs and, finally, sources have been utilized from Oroville, with subsequent accounting adjustments between and the CVP.</p> <p>Alternatively, if the best available resulting from structured hypothesis...shows that Delta food web improved, and evidence from collaborative science program is long-term smelt abundance is spring outflow, the alternative under the decision tree for would be to follow outflow established under D-1641.</p> <p>February, June: Flow constraints under D-1641 will be followed. All other months: no constant</p>
Key Existing Criteria Included in Modeling		
Winter/summer outflow	Flow constraints established under D-1641 followed.	Flow constraints established under D-1641 will be followed if not listed above.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Table 4.5: Comparison of Alternatives' Operational Criteria		
Indicator	Alternative 4A Criteria	Alternative 4 Criteria
Fall outflow	September, October, November implementation (2008) BiOp Fall X2 requirements. Delta and consistent RPA adaptive management process, these outflow targets may be met. Management and Monitoring Program and the best available scientific regarding all factors affecting delta	September, October, November: Section 4.1.1.1. Initial operations will be determined a decision tree. Within that evaluated starting operations will implement the USFWS (2008) requirements, and the alternative would be to operate to The alternative operation would if the research and monitor through the collaborative science show that the position of zone does not need to Bay and the lower Delta, biOp, to achieve the BDCP smelt habitat and abundance. All other months: No const
Delta Channel gates	Operations as required by NMFS and D-1641.	None specified.
Suisun Marsh Salinity Control Gates	At Gates would continue to be year from October through May.	None specified.
Export inclosure	Operation criteria are set by D-1641. The D-1641 export/inflow was designed to protect fish from entrainment. For Alternative 4A, Rec propose that the North Delta Di affect either Delta inclosure or ex the E/I ratio calculation.	Combined export rate is de diversion rate of the Banks and Jones Pumping Plant Delta channels. Delta inclosure is decided as Sacramento River closure downstream proposed north Delta diversion Bypass closure, Mokelumne River Cosumnes River closure, Calaveras San Joaquin River closure at miscellaneous in-Delta closures. Operation criteria are the under D-1641, subject to management.
Notes		b = It has not yet the combined export rate diversion rate of the new diversions.
Sources: Bay Delta Conservation Plan, Section 4.1.1, pp. 3.4-1, 3.4- Conservation Plan/California Water Fix, RDEIR/SDEIS, Section 4.1, Table 4.1-2, 2,		

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Table 5 provides a comparison of operational criteria used in the project of Conservation Measure 1 last year and the Tunnels Project. Shows the complex range and number of operational criteria that indicators or parameters that would govern real-time operations of indicated in Table 5, there are a number of changes made in 2015, the RDEIR/SDEIS) relative to the parameters and operational Conservation Measure 1 tunnels project. For every change and increase criteria that must be tracked for operating tunnels there is a interactions that must be accurately accounted for in real-time in provide accurate and appropriate feedback within the system of water interactions. The efficacy of real-time operations depends entirely on real-time operators have an accurate and complete grasp of the interactions among the varied components of that system. This accuracy extends not only to the conceptual and mathematical models with needs for accurate and timely data from reliable instrumentation in

Real-time operations are declined in Conservation Measure 1 of the

[R]eal-time operational decision-making process (real-time operations [RTOs]) and adjustments in operations within the range of CM1 [that is, Tunnels] to maximize water supply for SWP and CVP relative to the [BDCP] updates subject to providing the necessary protections for covered species.

The Tunnels Project's documents expect retention of BDCP's use of Delta facility and coordinating with each other. We note that the post hoc descriptions of RTOs would be made public through our organizations are not opposed to RTOs in principle. Tunnels that RTOs cannot be modeled only can they not be modeled, RTOs difficult (if not impossible) to regulate and monitor by state automatic beneficial uses have admittedly uncertain threshold conditions that should

²⁵⁰ BDCP, November 2013, *State Water Control Plan Decision Making Process*, lines 14-18.

²⁵¹ This is most explicitly noted in BDCP's *Application of the CWSMA to the CWSMA for the Evaluated Starting Operations Scenarios* to 162. Old and Middle River operations are an example, p. 5C.A-157, lines 31-44. "The magnitude of and Middle River clows cannot be simulated accurately with CALSIM because specied by the USFWS smelt working group, based on real-time monitor temperature conditions. The assumed restrictions provide a representative simulation conditions without any OMR restrictions." Moreover, real-time operations pose South Delta export operations with real-time adaptive operations in place. 5,000 cfs were allowed for 6 months (January-June), a maximum of (assuming the San Joaquin River diversion to Old River satisfied the 3 south of the OMR clow stations. But because of the 1,500 cfs limit BiOp), the maximum exports would be 1,400 taf per year. If the 6 months (with 1,500 cfs in April and May), a total of 78 is a very dramatic reduction for the CVP and SWP exports which of the total exports during these months. This uncertainty in the potential consequence of the adaptive management framework for the 2008 USFWS regarding OMR clow." Since BDCP contemplates real-time operations in several locations, uncertainties will compound for planning operations, exports, and out

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Tunnels Project proponents push use of RTOs as "silver bullets" to protect listed cish species but which come up short. This implies given broad discretion over project operations to make "short-term" usurpation of established laws and regulations in the name of exports relative to Delta in clows, water quality objectives, and Delta contrary to the SWRCB's role as the sole body with authority objectives.

Given that the adaptive management research agenda of Appendix D with large numbers of studies to increase understanding of the interrelationships, EWC lacks coincidence that RTO's silver bullet role is not the kind of "experiment" that is called for in the resources. Even more important it is unlawful as a basis for impacts under CEQA and NEPA. For example, real-time operations in 2014 and 2015 along the upper Sacramento River by the Bureau control temperature conditions, but failed to prevent large scale loss Chinook salmon while SWRCB staff and officials could only stand can create situations in which project operators can behave as it is unacceptable now that listed cish species are so close to operations can be permitted sufficient margins of error to prevent advocate application of the precautionary principle for enforcing and objectives.

Adjustments to water quality clow objectives and beneficial uses should be protected as required implementing regulations. The most sensitive of them will be endang Project operating criteria that reduce and reverse Sacramento River San Joaquin River water to Delta channels. The precautionary principle state and federal fisheries and water ³⁵³ **Should be Policies Preventing the extinction and restoring and enhancing the integrity of Bay Delta before new plumbing and south of Delta export deliveries.**

This is not a call to end south of Delta exports, but an realistically assess how to protect fully all beneficial uses by pro them fully under the CWA before reasonable quantities of Delta permitted. **The Tunnels Project has proposed would put plumbing and neither an acceptable, lawful nor reasonable prioritization.**

Last year, we noted that the essential purpose of real-time BDCP, is to

maximize water supply for SWP and CVP relative to the Annual subject to providing the necessary protections for covered species. RTOs timescale practicable for each affected facility and are part of the will be periodically evaluated and possibly modicied through the adaptive [citation]. The RTOs will satisfy Water Code Section 85321. "The BDCP time operational decision-making process in which cishery agencies ensure performance measures are achieved in a timely manner with respect to

²⁵² Peter Montague, accessed online <http://www.september.org/2015/06/delta>

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

When developing adjustments to Tunnels Project operations, you will real-time consider covered species risks, actions needed to avoid adverse effects, water allocations currently or in future years, “end of year” reservoir Reservoir low point delivery schedules for any SWP or CVP contractor, implemented throughout the year to recover any water supplies, reduced RTO team. These criteria for consideration place a great deal of minimize water costs to North Delta Intake diversions, lest they otherwise to assume for CEQA and NEPA purposes that some fraction will make errors.

RTO team activities would be needed under BDCP not only at Delta Cross Channel gates, Head of Old River gate, the Fremont “nonphysical barriers” intended to shoosh away from certain channels river clows.

The RTO team would attempt to plan RTOs as part of BDCP by anticipating periods when RTOs may be employed, alternative reservoir intended benefits to covered species, any expected effects on water analysis procedures used to track adjustments. RTOs would necessitate accounting procedures since the state and federal water projects will water exports just because covered cish show up unannounced and Intakes or the South Delta pumping plants.

This section of Chapter 3 in BDCP states some “salvage density” clow adjustments between January 1 and June 15 affecting the North Delta Intakes, RTO monitoring will manage bypass clow operation June, but the “exact triggers and responses for RTO at the development.” Generally they are intended to manage north Delta div

- within a preset range when juvenile salmonids are emigrating downstream
- within a preset range when adult sturgeon are migrating upstream.
- within a preset range to avoid an increase in frequency and magnitude (entrainment) at the Georgiana Slough compared to baseline (Real-time adjustments clows are primarily the responsibility of DWR operators with occasional appropriate.)
- and to manage the distribution of pumping activities among the Delta intake facilities to maximize survival of covered fish species

²⁵³ The Real-Time Operations Team would comprise one representative each cishery agencies and from DWR and the Bureau of Reclamation.

²⁵⁴ San Luis Reservoir has a “low point” of about 300,000 acre-foot Felipe Project contractors (Santa Clara Valley Water District and San Benito C to withdraw water due to the potential for algal bloom contamination to the fact that when San Luis Reservoir gets that low, temperature economically infeasible for San Felipe Project contractors to treat the water beneficial use.

²⁵⁵ Bay Delta Conservation Plan, Chapter 3, p. 3.4-26, lines 34-39, a

²⁵⁶ *ibid*, p. 3.4-28 to 3.4-29, Table 3.4.1-3.

²⁵⁷ *ibid*, lines 13-22.

Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project

But the fact these ranges and pumping activities are undisclosed descriptions are incomplete in both the Draft EIR/EIS and the

Undue, improper and excessive reliance on non-adaptive management and stressors for Delta smelt, winter-run and spring-run Chinook steelhead, and identifications sections of the RDEIR/SDEIS and Draft EIR/ the Tunnels Project exacerbate the threats and stressors, and cites charts that document the impact and the reliance on real-time management as supposed mitigations. Such alleged mitigations are metaphorical not mitigations in the hand. CEQA requires that mitigations actually avoid impacts. RTOs and adaptive management research tasks are not recommended mitigation "wild cards." You either mitigate to a level less than not RTOs and adaptive management are not enforceable," and cannot must be measurable and enforceable. Deteriorating through-Delta survival of Chinook salmon disclosed in the RDEIR/SDEIS believe the RDEIR/SD Project that supposed mitigations. Thus, the RDEIR/SDEIS is inadequate for proposing mitigations based on real-time operations and adaptive management claiming that significant adverse impacts are reduced to levels that or not adverse.

The National Research Council's committee on Sustainable Water and of the Bay Delta Estuary suggested using a technique to determine an appropriate strategy before it is undertaken. The technique probe

- the existence of information gaps
- good prospects for learning that an appropriate time scale component decisions, and
- the presence of opportunities for adjustment.

In the case of BDCP, the NRC committee concluded that adaptive in BDCP, but further concluded that "BDCP needs to address... difficult conservation measures into the adaptive ~~performance~~ *performance* ~~of the~~ *of the* ~~con. idence~~ *the adaptive management program* NRC committee also stressed that the results of adaptive management efforts management decision making.

We are more circumspect than the National Research Council about management to the politics of the Tunnels Project and the Delta regulatory and operational agencies fail repeatedly to apply existing state their actions, plans, and programs. The Tunnels Project's (and BDCP's) program is co-opted by the narrow engineering objectives we describe policy goals, focused as they are on better export water quality deliveries.

²⁵⁸ National Research Council, Panel to Review California's Bay Delta Conservation Science and Adaptive Management in California's Draft EIR/Supplemental Draft EIS, National Academies Press, 2011, p. 39. Accessible http://www.nrc.gov/docs/2014/04/record_id=13148. Emphasis added.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Table 6 Sources of Threat and Stressor Acknowledgements for Bay Delta Conservation Plan/Alternatives 4 and		
Listed Species	Threats and Stressors	Tunnels Project Sources
Delta Smelt	<ul style="list-style-type: none"> Increased water clarity Potential North Delta intakes entrainment and impingement, Exposure to contaminants and algal blooms due to increased residence time Reduced flows and upstream X2 habitat 	<p>Water clarity: RDEIR/SDEIS, p. 4.3.7-29</p> <p>North Delta Intakes: entrainment, predation, loss of X2 moves upstream</p> <p>Alternative 4 applies to Alternative 4A (Sec 4.1-43, lines 10-30), shows migration, BDCP Appendix 5C -42. See also Figures 4.3.2- Water Supply.</p> <p>Increased residence time: Appendix 5C, 5C.5.4-14 of BDCP; Table 8-</p>
Winter-run Chinook Salmon	<ul style="list-style-type: none"> North Delta intakes contact screens and predator concentration (hotspots) North Delta intakes reduce flows, leading to greater predation effects Reduced attraction flows for adults from North Delta Exposure to contaminants in term period (2060) 	<p>Fish screens operation with management plan and real-time p. 4.3.7-48, lines 11-17. Cl entrainment and impingement risk make same claim for delta.</p> <p>Reduced downstream and attraction BDCP Appendix 5C Tables C.A also Figures 4.3.2-7 and -8 Supply.</p> <p>Increased residence time: Appendix 5C, 5C.5.4-14 of BDCP; Table 8-</p>
Spring-run Chinook Salmon	<ul style="list-style-type: none"> North Delta intakes contact screens and predator concentration (hotspots) North Delta intakes reduce flows, leading to greater predation effects Reduced attraction flows for adults from North Delta Exposure to contaminants in term period (2060) 	<p>Fish screens operation with management plan and real-time p. 4.3.7-79, lines 15-17. Cl entrainment risk.</p> <p>Reduced downstream and attraction BDCP Appendix 5C Tables C.A also Figures 4.3.2-7 and -8 Supply.</p> <p>Increased residence time: Appendix 5C, 5C.5.4-14 of BDCP; Table 8-</p>
Central Valley Steelhead	<ul style="list-style-type: none"> North Delta intakes contact predator concentration (hotspots) North Delta intakes reduce leading to greater probability effects Reduced attraction flows for from North Delta intakes or Exposure to contaminants in period (2060) 	<p>Fish screens operation with management plan and real-time p. 4.3.7-199, lines 1-6. Cl</p> <p>Reduced downstream and attraction BDCP Appendix 5C Tables C.A also Figures 4.3.2-7 and -8 Supply.</p> <p>Increased residence time: Appendix 5C, 5C.5.4-14 of BDCP; Table 8-</p>

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

action as its preferred alternative. Tunnels Project appears to be the most damaging alternative possible. It is most definitely not the least the LEDPA.

Over two years ago, EPA pointed out that “Chapter 8 of the BDCP indicates that, as proposed, all project alternatives of the BDCP are one or more beneficial uses within the affected water bodies. It should sharply distinguish between alternatives and evaluate their compatibility with 40 CFR 1502.04(b) none year ago, EPA explained to state

Other reasonable alternatives could be developed by incorporating a suite of conservation, levee maintenance, and decreased reliance on the Delta. Such consistent with the purpose and need for the project, as well as Memorandum of Understanding among Federal Agencies and the Delta Refo

The “alternatives” of the Tunnels Project presented in the Draft EIR nothing more than peas in a pod. The alternatives have been a complete Tunnels Project proponents to obtain and present the Reasonable Alternative required under the Endangered Species Act in the RDEIR/SDEIS.

Under the NEPA Regulations, “This [alternatives] section is the heart statement.” The alternatives section should “sharply” decline issues and choice among options by the decision-maker and the public. 40 CFR draft statement is so inadequate as to preclude meaningful analysis, circulate a revised draft of the appropriate portion.”

Operation of the Tunnels Project would have enormous adverse environmental worsening violations of water quality standards. We understand that the supporters wish to take enormous quantities of water away from us we have a government of laws, not of men and women. It is a damaging and expensive project or follow the law whether certain the project is not dropped, it will be necessary to recirculate decision-maker review that presents a reasonable range of alternatives Tunnels Project and that would finally began to increase clows through reasonable alternatives required by NEPA must include the Reasonable (RPA) produced pursuant to the Endangered Species Act and the Practicable Alternative (LEDPA) pursuant to the Clean Water Act.

²⁶³ LEDPA, BDCP DEIS Corrections and Additional Editorial Recommendations, p. 7.

²⁶⁴ LEDPA Comments on BDCP ADEIS, p. 3, July 3, 2013.

²⁶⁵ LEDPA, p. 7.

²⁶⁶ LEDPA Detailed Comments on the Draft Environmental Impact Statement for BDCP Plan; August 26, 2014, p. 13.

²⁶⁷ <http://restorethedelta.org/wp-content/uploads/2015/09/7-22-15-BDCP-alts-ltr.pdf>

²⁶⁸ <http://restorethedelta.org/wp-content/uploads/2015/09/9-9-15-BDCP-cinal-1.pdf>

²⁶⁹ 40 CFR 1502.9(a).

III. Continuing Failure to Provide Adequate Funding Assurances

Because there is no new financial and economic analysis of the RDEIR/SDEIS, our comments last year about the Tunnels Project apply

There is great instability and uncertainty in the future of water export the range of reasonably foreseeable future Delta exports shows dramatic incremental water cost and financial performance. This instability fatally undermines provide credible funding assurances.

Compared to other sources of potential new water supply in California, from the high end of these alternative sources to being infeasible assumptions used in the BDCP analysis.

The BDCP analysis of water affordability from the Twin Tunnels project support the demand-side basis of financial assurances needed to make incidental take permits. The Fishery agencies should reject BDCP incidental adequate funding assurances.

The Twin Tunnels financing plan remains highly uncertain and fails to provide assurances needed to make statutory findings for issuance of incidental

Lack of a financing plan means the Tunnels Project and its fulfillment disclosure requirements of the California Environmental Quality Act Environmental Policy Act.

Economist Jeffrey Michael, director of the Center for Business and of the Pacific in Stockton, revisited his analysis of benefits and found that the Tunnel Project's economics were worsened by three

- **The new plan drops the 50-year permit, and any notion of future water deliveries change has already been revealed and importance to the economics can not be understated.** According consultants, the regulatory assurance **overvalued the basis for the value of the Tunnels to the water exporters' who would finance them.** case for the Tunnels completely falls apart without the regulatory estimated benefits by nearly \$10 billion.
- **The average annual incremental water yield with the tunnels has dropped by 135,000 acre feet (af) (about 15% of our scenarios with incremental yield that ranged from a loss of 27,000 af to gain of 392,000 af across all four scenarios with the new EIR incremental yield ranging between a loss of 23,000 af to 100,000 af.**

²⁷⁰ Jeffrey Michael, *ValleyEcon*, *Blog* BDCP is a good deal for water agencies? Jason Sunding disagree," June 23, 2012, <http://valleyecon.blogspot.com/2012/06/is-bdcp-a-good-deal-for-water-agencies.html>; see also Jason Sunding, "Benefit-Cost Estimates of the Tunnels," Sept 11, 2013, <http://valleyecon.blogspot.com/2013/09/comparing-benefit-cost-estimates-of-the-tunnels.html>; and the *LA Times*' Report on Restructuring the Delta, <http://www.latimes.com/local/lanow/la-fi-delta-2015-04-quick-take-on-la-times-report-on.html>

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

average gain of 27,000 life best case scenario for water 284,000 af, and the average dropped by 135,000 af. Michael would drop benefits by about \$1 billion.

- **The new plan shows the estimated construction period has** The construction period is now described as 2016 to 2029, 2013 plan. An extra 4 years of waiting to receive any financing costs will further reduce the benefit-cost ratio.

Inaction on financing is underscored by indefinite postponement of State Water Contractors and the California Department of Water Resources problem of repayment arrangements remains unresolved. How would the entity make state water contractors and their member agencies committed given the Tunnels Project's exorbitant cost and the relative cost of supply alternatives? How would federal water contractors of the Center for Fair Share be beneficiaries of the Tunnels Project? Can congressional

Kern County Water Agency, in its draft comment letter on the stated bluntly:

The alternatives in the RDEIR/SDEIS serve as an important initial step to the challenges facing California's water resources and the Delta. The currently provide [public water agencies] with a Project that is economically further detail below, additional efforts need to be taken to reduce the Project's yield, and improve the likelihood that the Project will be in a manner that improves water supplies at an affordable cost.

The step-up provisions that are missing from existing contractual Metropolitan Water District and its member agencies continues to be resolution.²⁷⁵

The ability and willingness to pay of Central Valley Project (CVP) question mark. As we noted last year, agricultural water agencies

²⁷¹ See BDCP, *Downriver* 2013, Chapter 5, http://www.wateraccessibility.com/baydeltaconservationplan.com/Libraries/Dynamic_Document_Library/Public_Draft_BDCP_EIR-EIS_Chapter_5_-_Water_Supply.sclb.as and http://baydeltaconservationplan.com/RDEIRS508/Recirc_Figures/Fig_4.3.1.15_NS%20Delta%20LT%20Avg_Alt4A-508.pdf

²⁷² See http://baydeltaconservationplan.com/RDEIRS/Appendix_A_Rev_DEIR-EIS/App_22B_Air_Assumptions.pdf and http://baydeltaconservationplan.com/RDEIRS/Appendix_A_Rev_DEIR-EIS/App_16A_Regional_Imp.pdf

²⁷³ Negotiation Meeting #2 originally scheduled for Tuesday, February 17, 2015 has been postponed. It will be rescheduled for a later date. Details new date is available. "This is the most current announcement of negotiations, accessible October 25, 2015. <http://www.ca.gov/swp/contractamendmentforbdcpc/announcements.cfm>

²⁷⁴ Draft letter of James M. Beck, General Manager, Kern County Water and David Murillo, Regional Director, US Fish and Wildlife Service, *Environmental Impact Report/Supplemental Draft Environmental Impact Report*, October 2015, p. 2.

²⁷⁵ EWC Comments, June 11, 2014, pp. 103-107.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

both cost allocations and water deliveries within the CVP. A 200 Ribbon Task Force found that nearly \$1.3 billion is owed by of the CVP, while San Joaquin Valley and Sacramento region CVP about 21.5 percent of the EIR's costs and intractable drainage challenges play Luis Unit on the west side of the San Joaquin Valley, with the books, including for BDCP Applicant agency Westlands Water District of the Interior recently announced a proposed settlement obligations, that if Congress approves, would relieve Interior and the obligation to provide drainage service to the San Luis Unit, and to the CVP (including for drainage service repayment), while more available.²⁷⁷ Should the settlement go through, this would remove next increase the debt capacity of Westlands Water District to afford the Tunnels Project—all at an exorbitant cost to US taxpayers and

On the State Water Project side of the picture, a San Francisco October 9, 2015, that the Metropolitan Water District of Southern County Water Authority a cumulative total of \$231.7 million due to the Authority. The judge is expected to increase the judgment MWD lose as this case makes its way through appeals, what outcome on MWD's ability to support the financial requirements of case is resolved, how could Tunnels Project funding negotiations resolve financial uncertainty?

An additional financing issue not disclosed in the RDEIR/SDEIS is regional water contractors of the State Water Project and Central Valley rates versus increases in their property tax bases to finance the contains no analysis of this possibility nor what economic impacts strategy would have on water demand and local water conservation Code Section 85021. Using property taxes rather than water rates would disconnect water consumption from the real cost of water, **SDEIS is deficient and inadequate for omitting an economic and proposed project, and for omitting discussion of this particular impact environment.**

²⁷⁶ EWC Comments, June 11, 2014, pp. 107-109.

²⁷⁷ Congressional Research Service, *Drainage Settlements*, July 25, 2015, pp. 1-2. Accessible at <http://penryhill.com/jmscileseller/docs/IF10245.pdf>; US Bureau of Reclamation, Mid-Region Public Affairs, *Westlands v. United States Settlement*, September 2015, www.dwr.ca.gov/resource-management/drainage/drainage-settlement-documents and www.dwr.ca.gov/wp-content/uploads/2015/10/westlands-vs-united-states-settlement. Westlands' website contains the draft settlement, a list of permanently retired lands, legislation to implement the settlement. See also California Water Impact Report: the *San Diego Report: Retiring Toxic Farmland in Western San Joaquin Valley Environment*, and *Taxpayer Watch* 14, 2015. Accessible at <http://www.sdcwa.org/wp-content/uploads/2015/07/san-joaquin-valley-would-lose-the-percentage-of-land-retirement-list-accessible-combat-ap-ciles/San-Luis-Unit-Land-Retirement-Final-Report-071415.pdf>

²⁷⁸ San Diego County Water MWD and New Water Reuse Authority \$232 million, *San Diego County Water Authority*, October 10, 2015, <http://www.sdcwa.org/mwd-rate-challenge>. Additional background and source documents on the case are available at www.sdcwa.org/mwd-rate-challenge

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Finally, the BDCP Tunnels Project plan, RDEIR/RDEIS does not contain compensation for the five Delta counties (Yolo, Solano, San Joaquin, Delta cities and towns, and dozens of reclamation districts) to offset declines resulting from construction and operation of the project. While economic mitigation for the greater Delta region, the plan fails to address the Delta Reform Act. This compensation is required by Water Code. So many questions remain for the RDEIR/SDEIS; answers continue to be delayed. Meanwhile, the RDEIR/SDEIS fails to disclose the problems let

²⁷⁹ "Construction of a new Delta conveyance facility shall not be initiated until the contractor has received water from the State Water Project and the federal authority representing those entities have made arrangements or entered into mitigation of property tax or assessments levied by local governments or construction, location, mitigation, or operation of new Delta conveyance facilities." Section 85089(b).

IV. Worsening Failure to Provide Governance and Implementation Support

Failure to coordinate timely Section 7 consultation with NMFS and crucial elements of the NEPA and CEQA environmental reviews in coordination and administration of the Tunnels Project construction and operation. Key products of the needed biological opinions—the matter of whether species and the formulation and implementation of reasonable and prudent jeopardy and encourage survival and recovery of ~~organizing the~~ *administering* avoidance and minimization of impacts, identifying opportunities for real-time operations, and for setting an agenda for adaptive critical elements help decline Tunnels Project governance. In the rush quality certification and dredge/cill approvals from the State Water and the US Army Corps of Engineers, perhaps there is no greater prematurely than the absence of these critical elements from the *How will these administrative, scienti.ic, and resource management be governed?*

At least in last year's Bay Delta Conservation Plan there were though in our comments last year we felt there were egregious through these matters this year, however, it appears no thought is given by proponents to these problems; they seem implicitly to regard their primarily a water project that would be owned and operated by Project to help benefit the Bureau's Central Valley Project—though ownership is not even stated unequivocally that we could find in

Other questions continue to abound about this project that originated will the financial assurances be obtained by Tunnels Project proponents of the reasonable and prudent alternatives, once they emerge from How will environmental justice and water quality concerns of the incorporated into Tunnels Project operational decision-making? (See our there be the equivalent of a Permit Oversight Group? An Author be a "California WaterFix" office to implement the Tunnels Project (including RTOs), restoration, annual planning, and adaptive management there are to be any public entities governing operation and man their activities and meetings comply with Bagley-Keene and Brown the California Government Code? The RDEIR/SDEIS is silent on such?

²⁸⁰ EWC Comments, June 11, 2014, Section V, pp. 110-117.

V. This Year's Tunnels Project is Also Contrary to Law

BDCP's draft July 2013 Implementing Agreement says (twice) that "a pursuant to this Agreement, the BDCP, or the Permits must be local, state and federal laws and regulations." ²⁸¹ The Implementing Agreement is identical to the provisions of this section of EWC's comments describes the to comply with many applicable laws and regulations.

The Bay Delta Conservation Plan, the Tunnels Project, and its Project Need do not comply with existing state or federal law. The with established law in this section and the following section wh itemized with respect to the National Environmental Policy Act and Quality Act.

We have already commented in Section II herein on unlawful or statements of objectives, purpose and need for the project, and the Clean Water Act.

Our comments in this section focus on many ways in which the Reform Act of 2009, the California Water Code, the California Co unreasonable use and unreasonable method of diversion of water, and make a case for finding the Tunnels Project inconsistent as a Act.

The RDEIR/SDEIS omits key federal legislation from its regulatory baseline.

The RDEIR/SDEIS fails to include Coordinated Operations Act (Public Law (Public Law 86-488) and the Central Valley Project Improvement Act

RDEIR/SDEIS does not meet Environmental Justice legal standards.

The State of California declines environmental justice as the fair cultures, and incomes with respect to the development, adoption, implementation of environmental laws, regulations, ²⁸² and federal laws require agencies consider environmental justice and to prohibit discrimination in their. The Presidential Memorandum accompanying the Federal Executive Order singles out NEPA and states that "[e]ach Federal agency must provide community participation in the NEPA process, including identifying potential measures in consultation with affected communities and improving the meetings, crucial documents, and notices. The Tunnels Project fails to requirements, including

²⁸¹ Draft July 2013 Implementing Agreement Sections 23.6 and 23.22.

²⁸² Draft July 2014 Implementing Agreement Section 24.5, p. 89. Section 24.20, p. 92, will be governed by and construed in accordance with the laws of California."

²⁸³ California Government Code § 65040.12(c).

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

1. **CEQA participation requirements** CEQA requires a process that provides for meaningful participation of the public. According to Public Code 21061: “The purpose of an environmental impact report is to the public in general with detailed information about the effects likely to have on the environment; to list ways in which the project can be minimized; and to indicate alternatives to such Code section 21003(b) provides: “Documents prepared pursuant to organized and written in such a manner that will be meaningful to the public.” CEQA Guidelines section 15201 requires participation is an essential part of the CEQA process. Each provision in its CEQA procedures for wide public involvement to evaluate public reactions to environmental issues relating to the SDEIS fail to meet the purpose of CEQA and has obstructed public participation. Lead agencies fail to translate critical documents outreach to affected communities to facilitate their meaningful participation.
2. **NEPA participation requirements and Equal Justice Executive Order** Executive Order (EO) 12898 (1994), Federal Actions to Address Minority and Low-Income Populations, requires Federal environmental justice part of their mission and to develop. The Presidential Memorandum accompanying the Executive Order specifies NEPA, and states that “[e]ach Federal agency must provide opportunity for community participation in the NEPA process, including identifying mitigation measures in consultation with affected communities and accessibility of public meetings, crucial documents, and notices to meet NEPA participation requirements and the Presidential Memorandum community participation in consultation with affected communities and accessibility of public meetings, crucial documents, and notices.”
3. **Title VI of the Civil Rights Act of 1964** In the United States, the ground of race, color, or national origin, be excluded or benefits of, or be subjected to discrimination under any program Federal financial assistance. RDEIR/SDEIS fails to meet Title VI 1964, by failing to provide sufficient documents for information speaking communities, thus excluding them from participation.
4. **California Government Code section 11135(a) and implementing California Code of Regulations Title 22 Section 18823(a)** California Code of Regulations section 11135(a) provides: “No person in the State of California shall be excluded or denied benefits of, or be subjected to discrimination under, any program or activity on the basis of race, color, or national origin, ethnicity, or ancestry, marital status, sex, sexual orientation, gender identity, or disability, unless the exclusion or denial is based on a bona fide occupational qualification for a particular job.”

²⁸⁴ Memorandum from President Clinton, March 11, 1994, available at <http://www.epa.gov/ohrt/ceqa/12898.htm>.

²⁸⁵ Executive Order 13166, “Improving Access to Services for Persons with Disabilities,” 65 Fed. Reg. 121 (Aug. 16, 2000). EPA Guidance to Environmental Protection Recipients Regarding Title VI Prohibition Against National Origin Discrimination for Precipitous Persons, 69 Fed. Reg. 39602 (June 25, 2004). See *Lau v. Nichols*, 441 U.S. 681 (1979) (National Origin Discrimination to Limited English Speakers). See also Executive Order 13166, 65 Fed. Reg. 121 (Aug. 16, 2000), and 69 Fed. Reg. 39602 (June 25, 2004).

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

operated, or administered by the state or by any state agency or receives any financial assistance from the state.” RDEIR/SDEIS Government Code section 11135(a) and California Code of Regulations 98211(c) and 98100 by unlawfully denying full and equal access to communities.

- The Dymally-Alatorre Bilingual Governmental Code Sections 7290-7299.8** requires that, when state and local agencies serve a “substantive speaking people,” they must (among other things) translate documents into their clients’ languages. RDEIR/SDEIS fails to meet Bilingual Services Act by not providing at a minimum the Executive Order than.

Language Accessibility and Public Participation Proponents have still failed to respond adequately to requests for materials and outreach in Spanish. Currently, only some documents (e.g., Fast Facts) are available in but they only present promotional information that is too limited to audience to engage meaningfully in the decision-making process. More narrative is misleading about impacts of the Tunnels Project.

The Fast Facts documents issued this summer at the July open issues raised in comments received on last year’s Draft EIR/EIS documents are negative impacts of the tunnels mentioned—on water quality and subsistence fishing, impact on small communities, documents are still not available in other languages, thus making individuals, but to many communities as a whole which have speakers.

In addition, when environmental justice community members and partner number for more information in Spanish, they are prompted to message, our colleagues reported that the messages were returned. Immediate questions or concerns were left unanswered or referred to answers that do not exist on those sheets.

As noted in a joint May 28, 2014, letter regarding the lack of environmental justice survey completed to support Chapter 28 of the Justice) excluded non-English speakers within the Delta. Since then, proponents. Thus, EJ legal standards concerning language accessibility are to publish even the Executive Summary in languages other than

Last year, we also commented that the closing of the BDCP the promise of encouraging public participation. This year, the two 28, 2015, in Sacramento and the second non-July 29, 2015, conducted for the purpose of collecting public feedback on the Tunnels Project. The open house process once again avoided meaningful traditional public hearing process by presenting a “science fair” style open house was hosted during typical working hours, which, while which staffed the event, did not allow many community members open house’s very purpose: to elicit and capture public comments

²⁸⁶ California Government Code Sections 7290-7299.8.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Project). Attendees of these open house meetings conveyed to us advertised at these meetings for hearing impaired persons.

Land Use, Flood Risk, and Affordable Housing. Last year, the Tunnel fails to consider how to maintain affordable housing opportunities in changes are implemented. Impacts on low-income home owners, such and lowered home value must be addressed as a part of any RDEIR/SDEIS call.

Disproportionate impacts of flooding on renters must be mitigated if impacts on existing communities of alterations in land use plans and potential for increased vulnerability to flooding.

A sustainable Delta will require dramatic changes in land use developed, thereby limiting choices for flood attenuation and increasing catastrophic damage associated with a seismic event. As those choices to provide equitable benefits in planning for EJ communities, but disproportionate impacts on those same communities. For this reason, Delta must identify and account for the particular impacts on EJ

We are deeply concerned that the Tunnel Project facilities and a viable options for improving land use and affordable housing for disproportionate number of the developments the Tunnels Project would by low-income, predominantly Latino residents. Changes in flood mapping profound effect on these developments, while their ability to recover

Moreover, these existing communities may be detrimentally impacted by developments protected by new “super levees,” which have the potential ways that may negatively impact lower income communities. The following EIR/EIS (Appendix: Figure 6-5 SPFC and Non-SPFC Levees, 6-6 Effective Areas, 6-7 Effective Federal Emergency Management Agency Flood Zone Populations in the Plan Area, and 28-2 Low-Income Populations in FEMA flood zone encompasses much of the central, south, and North Marsh where many low-income and minority Delta residents live. If impacts to communities whose transportation routes could be disrupted

At an even greater disadvantage are communities that reside in, floodplains—including tenants and farmworkers. These communities receive property owners after a flood event and are more likely to total or near total loss of their movable property. Any emergency and vulnerabilities of these residents as well as their capacity to is, in fact, supported with resources.

As development becomes limited and/or more expensive in floodplains, housing will be curtailed. Any land use changes must include a housing for the current and expected population in the Delta RDEIS/DEIR.

Public Health and Water Quality. Project degrades rather than protects water quality in the Delta. In addition, water quality and other Health are based on many decisions/papers published prior to our effectively consider public health impacts for environmental justice comm

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

The Tunnels Project creates an overall pattern of inequitable and impacts, several of which would have public health implications. By right has it enters the Delta, the Tunnels diversions reduce clows increases residence time, which, in turn, concentrates salinity and po central Delta, while privileging export water quality south of the Over and over again in the RDEIR/SDEIS, modeling results for nitrate, pesticides, mercury, selenium, and dissolved organic carbon show water quality impacts from the Tunnels Project. (See our Section above.) It also contributes to why harmful algal blooms will be the project down the road. These and other water quality consti the RDEIR/SDEIS, all worsen for south and west Delta water wa improve for the export pumps. This is a conscious decision to the environmental justice communities that rely on it; it is an purpose and the water quality modeling, however, is completely done,

In addition, as noted in RDEIR/SDEIS Chapter 25-66, there are drinking water quality, which relate to precursors for carcinogenic significant water supply treatment cost issue for both municipal exp drinking water suppliers, such as Stockton, Walnut Grove, Isleton, Ri upgrades would further increase the burden of water accessibility on communities.

As noted in the RDEIR/SDEIS, public health impacts have not been assessed.²⁸⁸ As RDEIR/SDEIS state, public health impact would be significant addition, RDEIR/SDEIS still fails to comprehensively evaluate the public communities on cish consumption and exposure to methylmercury. Specific Tunnels project are pursued during subsistence cishing by populations an environmental injustice. Despite the RDEIR/SDEIS stating the adverse effect impacts of the Tunnels Project, more investigation and analysis need in EWC's letter, Interior Suisun Marsh salinity is expected to increase of the Tunnels, according to data in the RDEIR/SDEIS. Reverse flow will increase, which may injure neighboring water right holders. Numerous criteria and beneficial uses will be violated and conditions degraded. be harmed by worsening mercury and selenium concentrations contamin long term, resulting from Tunnels operations.

BDCP's analysis of selenium as a water quality stressor is inadequate address uncertainties about the regulatory and technological setting of Project and long term management and mitigation of selenium loading the western San Joaquin Valley. These projects indicate the ecological

²⁸⁷ See Project Objectives at 1-8, Section 1.1.4.1, lines 18-21, stating “DW proposing the proposed project will to make physical and operational improv Delta necessary to restore and protect... water quality within a stable statutory and contractual obligations” and Project Objectives at 1-8, Section project objectives include to “[r]estore and protect the ability of the SV amounts...” Emphasis added.

²⁸⁸ RDEIR/SDEIS, Appendix A, 3.32

²⁸⁹ RDEIR/SDEIS, Appendix A, Chapter 28.5.8.7.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

various scenarios of selenium loading to the Bay Delta Estuary. risks and foreseeable costs and circumstances involved.

The RDEIR/SDEIS have conducted no analysis of in-Delta water delivery patterns represented by these beneficial uses when it conducts its Tunnels Project. These uses are protected by, among other statutes, 1959. Additional evaluation must be conducted and allow for proper precautionary principle (see our Section I and II comments); time operational decisions to exacerbate environmental injustices for Delta communities.

To ensure that community and public health and the environment Project, we recommend that decisions on changes in conveyance and infrastructure be incremental and reversible, dependent upon the measured ecosystem, essentially incorporated into the proposed Collaborative Science Management Program agenda. This can only be done by having that the public knows it will succeed. Success for the Delta is assured before any Tunnels Project project is deemed safe to discharge must be limited to protect water quality. Remediation of must be prioritized and ecosystem restoration projects must be prioritized as to limit the potential for additional methylation of mercury and wildlife and human health.

Violations of Civil Rights and Environmental Due Process for environmental justice communities, lack of proper assessment of public health impacts of access to information regarding the project, lack of provision of bilingual information, failure to give notice of meetings in various languages, the document through required computer access, exorbitant fees violate of environmental justice and constitutes violations of CEQA and NEPA civil rights of a significant population of the cive Delta counties.

The Tunnels Project is contrary to the Delta Reform Act.

Tunnels Project proponents continue to construe their responsibilities under of 2009 far too narrowly. That analysis focuses almost entirely on sets out special findings the California Department of Fish and Game describes an appeal process to the Delta Reform Task Force. Other

²⁹⁰ California Water Impact Network testified to the State Water Resources the Grassland Bypass Project and the challenges Grassland area farmers face a cost-effective treatment technology for concentrating, isolating, and C-WIN Estuary on Recent Salinity and Selenium Science and ~~the~~ *Mepathy* by T. Stroshane and submitted to the State Water Resources Control Board and the Low Salinity Zone, September 5, 2012, ~~14~~ *14* pages plus appendices www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/cmnt081712/tim_stroshane.pdf.

²⁹¹ This narrow treatment is exemplified in *California EIR/EIS Notes on 3A* *Alternatives*, *Conservation Measures* 3A-15, p. 3A-149. It erroneously assumes conditions, flow criteria, diversion rates, and conveyance designs are the criteria for a "reasonable range" of alternatives" for BDCC.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

with which the Tunnels Project must also comply, and which are analyzed in the RDEIR/SDEIS.

A new section in the "Project Objectives" introduces a Tunnels Project "Improve the ecosystem of the Delta by reducing the adverse effects of diverting water by siting additional intakes of the SWP²⁹² and coordinate. The objective alleges as a fact something that is demonstrably false results and information: Adding north Delta intakes on the lower number of places where adverse impacts of State Water Project reduced critical aquatic habitat, and increased pollutant loads and concealed federal endangered species acts and the Delta Reform Act²⁹³ no

The Act declares that "the Sacramento-San Joaquin Delta watershed infrastructure are in crisis and existing Delta²⁹³ infrastructure is not the most important natural resource for California and the nation. It serves as the hub of the California water system and the most valuable west coast of North America. In the South America many ecologically and commercially important species (which are also public trust resources) declined in the years. These declines are related, among other factors, to increased

Under the Act, departments of the State of California have the in the Delta. This includes the California Department of Water Resources goals" have a holistic purpose beyond water and ecology:

"Coequal goals" means the two goals of providing a more reliable protecting, restoring, and enhancing the Delta ecosystem. The coequal goals that protects and enhances the unique cultural, recreational, natural resource the Delta as an evolving place.

The Act states that the public trust doctrine is at the heart of "The longstanding constitutional principle of reasonable use and the foundation of state water management policy and are particularly the Delta Objectives in the Act also inherent in and clesh out water supply reliability is to be understood:

The policy of the State of California is to achieve the following inherent in the coequal goals for management of the Delta:

- (a) Manage the Delta's water and environmental resources and the water long term.
- (b) Protect and enhance the unique cultural, recreational, and agricultural an evolving place.

²⁹² RDEIR/SDEIS, Section 1.4.1, p. 1-8, lines 32-33.

²⁹³ Water Code § 85001 subd. (a).

²⁹⁴ Water Code § 85002.

²⁹⁵ California Water Code Sections 85210 and 85023.

²⁹⁶ California Water Code Section 85054.

²⁹⁷ California Water Code Section 85023.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

- (c) Restore the Delta ecosystem, including its fisheries and wildlife, as a wetland ecosystem.
- (d) Promote statewide water conservation, water use efficiency, and sustainable
- (e) Improve water quality to protect human health and the environmental quality objectives in the Delta.
- (f) Improve the water conveyance system and expand statewide water
- (g) Reduce risks to people, property, and state interests in the Delta appropriate land uses, and investments in cloud protection.
- (h) Establish a new governance structure with the authority, responsibility, support, and adequate and secure funding to achieve these objectives.

To implement objectives to restore Delta ecosystems and promote sustainable water use efficiency, and sustainable water use, in helping to achieve reduced reliance on the Delta for the state's future water supply

The policy of the State ~~to reduce reliance on the Delta~~ ^{in the meeting} ~~in California~~ ^{water supply needs} through a statewide strategy of investing in improved conservation, and water use efficiency. Each region that depends on water to improve its regional self-reliance for water through investment in water advanced technologies, local and regional water supply projects, and coordination of local and regional water supply efforts.

The Act cinds and declares that the coequal goal of “water implementation of water use efficiency and conservation projects, wastewater desalination, and new and improved ³⁰¹ ~~in the state~~ ^{inherent} objective, to which Tunnels Project proponents refer often to “improve the water conveyance 85020 subd. (f) therefore must conform to achieving the coequal considerations that the Act says in here in those goals as well the Act.

When the Act's objectives (“inherent in the coequal goals”) and the Delta are taken as a whole (which is how the ~~the~~ ^{the} legislation is evident the Act intends active protection of the Delta's water, ~~and~~ ^{and} cumulatively, they ~~are~~ ^{are} ~~stewardship~~ ^{stewardship} ~~to~~ ^{to} steward, ~~and~~ ^{and} according ~~to~~ ^{to} ~~the~~ ^{the} ~~English~~ ^{English} ~~language~~ ^{language} manage, guide, administer, or supervise real property, passengers on a ship or airliner. More recent ~~the~~ ^{the} landscape and the environment. The plain meaning of “stewardship the sustainable management of the Sacramento-San Joaquin Delta ecosystem reliable water supply for the state, to protect and enhance the Delta, and to establish a governance structure that will direct development a legally enforceable Delta Plan.”

²⁹⁸ California Water Code Section 85020.
²⁹⁹ California Water Code Sections 85020 subd. (c-d).
³⁰⁰ California Water Code Section 85021.
³⁰¹ California Water Code ~~85054~~ ⁸⁵⁰⁰⁴ subd. (b).
³⁰² ~~bid~~
³⁰³ California Water Code Section 85001 subd. (c).

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

While the Tunnels Project aspires to a "fundamental, systemic change" in responsibility for and even evinces an open hostility to statewide water the Delta be protected and sustainably managed as "the most vulnerable west coast coast of North America. The Tunnels Project severs the coe and to concentrate state agency effort on water supply reliability enhancement in the Delta.

Merely achieving prevention of "jeopardy" for listed cish species in opinion will not protect and enhance the Delta ecosystem. Jeopardy since one purpose of the Tunnels project is

restor[ing] and protect[ing] the ability of the SWP and CVP to deliver hydrologic conditions result in the availability of sufficient water, consistent state and federal law and the terms and conditions of water delivery and certain members of the San Luis Delta Mendota Water Authority and agreements.³⁰⁴

While the RDEIR/SDEIS protests that this purpose of meeting cont target," and "not intended to simply that increased quantities of Tunnels Project, this purpose is directly contrary to the Delta I, importers to reduce their reliance on Delta supplies.

Last year, the Draft EIR/EIS failed to properly consider what ecosystems and restore fisheries. Code Section 85320 lays out which BDCP would go before the California Department of Fish approval of its natural communities conservation plan and incidental package and issuance of incidental take permits. Section 85320(b)(2) findings CDFW must make:

(A) reasonable range of flow criteria, rates of diversion, and the criteria for approval of a natural community conservation plan as Section 2820 of the Fish and Game Code, requirements and flows necessary recovering the Delta ecosystem and restoring fisheries under a reasonable which will identify the remaining water available for export and other

The Tunnels Project is no longer eligible for this special process instead be handled as a covered action by the Delta Stewardship consistence with the Delta Plan. We believe this will be hard currently in litigation over whether the Delta Plan itself complies challenging to determine whether a covered action such as the consistent with the Delta Plan without having to revise the Plan

Last year's Draft EIR/EIS failed to properly comply with the "the goals" are decided as:

³⁰⁴ RDEIR/SDEIS, Section 4.7, 4.7.1, 4.7.2, 4.7.3, 4.7.4, 4.7.5, 4.7.6, 4.7.7, 4.7.8, 4.7.9, lines 33-37.

³⁰⁵ California Water Code Section 85021.

³⁰⁶ Emphasis added.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

the two goals of providing a more reliable water supply for California enhancing the Delta ecosystem. The coequal goals shall be achieved in that it enhances the unique cultural, recreational, natural resource, and agricultural evolving place.

The Tunnels Project thoroughly unbalances application of the co-equal Act. It fails to “improve the water conveyance system,” as required. While this section of the Act does not set forth criteria by system of the Delta are to be judged, the Tunnels Project fails Delta ecosystem; as we have already pointed out in these comments habitat for listed cish species, and it will degrade water quality pollutant criteria or degradations to sensitive beneficial uses of the cannot be found to “improve the water conveyance system” over the future time without the project in the RDEIR/SDEIS’s No Act “improvement” must be evaluated under the coequal goals framework.

The Tunnels Project also fails to comply with WC Section 85020 Delta levee improvements in its project. The purpose of the SDEIS only considers Tunnels Project as a means of reducing future impacts to water seismic or other levee failure. It does not consider Delta levee flood risk not only to water conveyance, but also to the Delta.

Omission of Delta levee improvements lies in the face of the *Economic Sustainability Plan*, which states that levees can be brought up to reduce the probability of catastrophic levee failure for \$2 to \$4 per Code Section 85020(g), BDCP would have to include a goal (and measures and funding assurances) to improve critical Delta levees for and water supply reliability.

Last year’s Draft NEIR/EIS failed to comply with the Water Code to reduce reliance on diversions from the Delta Water Control Project objectives and purpose call for “full contract deliveries” to CVP and USEPA³¹⁰, that volume of water is 7.43 million acre-feet, nearly maximum amount of water never diverted from the Delta in a increase, not reduce, reliance on the Delta for imported water. that alternatives providing less than full contract deliveries is acceptable work toward meeting full CVP and SWP contract deliveries is clear diversions, not reduce them. This fundamental claw continues in

³⁰⁷ California Water Code Section 85054.

³⁰⁸ Water Code Section 85020(g) which public states the State of California is objectives that the Legislature declares are inherent in the coequal goals. Reduce risks to people, property, and state interests in the Delta by appropriate land uses, and investments in flood protection.”

³⁰⁹ See footnote 217, above.

³¹⁰ See June 2010 letter from USEPA to <http://www.usbr.gov/dnms/eg/> and USFWS. webfm_send/150

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

It should also be noted that in drought years, the Bureau of Water Resources Control Board to have Delta water quality standards for protecting "health and safety" for their contractors. The Board has a decision of legal due process of all other interested parties, and operational criteria modeled in the Draft EIR/EIS, and change the Board's propensity to request temporary urgency changes that the Board grants as an event, BDCP modeling and expected reliance on "real-time operations" reliance on the Delta for exports.

By definition of the project's purpose, need, and design of each Project violates California Water Code Section 85021, which requires for future water supplies among those already depending on Delta operational goals focus on increasing reliance on the Delta for wet and above normal years, while continuing emphasis on South other water supply. Moreover, the Tunnels Project's unacknowledged purpose reliability of market-based cross-Delta water transfers is also contrary 85021.

Tunnels Project proponents fail to demonstrate in the RDEIR/SDEIS and regionally to decrease their reliance on Delta imports/exports for the Tunnels Project.

The Tunnels Project proponents' obsessive focus on full contract deliveries to the Tunnels Project come at the exclusion of other potential 2009 Delta Reform Act can be met by other activities like improvements, increased Delta outflows and regional self-reliance for water use efficiency, water recycling, advanced water technologies, local projects, and improved regional coordination of local and regional water actions are analyzed as reasonable alternatives in the RDEIR/SDEIS.

The Tunnels Project RDEIR/SDEIS fails to specify how the preferred Water Code Section 85086(c)(2) of the Delta Reform Act. This Resources Control Board to include "appropriate slow criteria" in its change petition. These criteria shall be informed by the analysis Code Section 85086(c)(1)]—meaning *Delta Reform Act Board Report* of August 2010. RDEIR/SDEIS also fails to mention and analyze the need to incorporate this requirement over time through an adaptive management-based process and monitoring results into ongoing Delta water management.

The RDEIR/SDEIS fails to demonstrate how the Tunnels Project will Use and Public Trust Doctrines, mentioned in Water Code Section these doctrines are "particularly important and applicable" to the no analysis in the RDEIR/SDEIS that evaluate the proposed/preferred alter standpoint of its compliance with Article X, Section 2 of the compliance with the Public Trust doctrine. Evaluation of this action Section 85023 (which merely states existing law applicable throughout this compliance.

³¹¹ RDEIR/SDEIS, Section 4.1, Table 4.1.1-2.

³¹² Bay Delta Conservation Plan EIR/EIS, Chapter 5, Water Supply, Figures (years).

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

*The RDEIR/SDEIS fails to demonstrate compliance with Water Code specifically in the area of origin laws and documents that apply to the California Water Code requires that actions contemplated under the area of origins water rights statutes. The RDEIR/SDEIS fails to demonstrate results for any other analysis that it complies with Water Code Protection Act of 1959. Delta outflow is reported by the RDEIR times of water in the Delta increase. In-Delta salinity levels are increase which will reduce the quality of water for in-Delta agricultural uses enjoyed by environmental justice communities whose mering in the Delta for a significant portion of their diet is expected to increase substantially from Tunnels operation, according (Figure 12, this document). Reverse flows on the lower Sacramento injure neighboring water right holders and put vulnerable listed and entrainment and death at the north Delta intakes. Numerous water beneficial uses will be violated and degraded. And subsistence cisher mercury and selenium concentrations contaminating cish tissues in the Tunnels operation. **The RDEIR/SDEIS has conducted no analysis of in- Delta subsistence fishing patterns represented by these beneficial uses when operational studies of the Tunnels Project. These uses are protective the Delta Protection Act of 1959.***

In addition, the RDEIR/SDEIS fails to **Delta common pool** the experiences of environmental justice communities and the informal ways Delta habitat, cish, and other resources for their subsistence and users of water via the common pool and its public trust resources. Water Resources recognizes the Delta common pool for purposes of transfers.³¹³

The EWC described the relevance of the 1959 Delta Protection Act that governs projects like the Tunnels for the Project, linked Delta Protection environmental justice by virtue of the fact that the Act treats includes, in our view, not just lawful water diverters residing in water, human and non-human.

The RDEIR/SDEIS fails to comply with Water Code Section 1700, et seq.

Last year, we commented on Conservation Measure 21 (addressing through "remediation" or removal of landowners' diversions. This installation, but it was also about eliminating competing diversions. DWR complained to the State Water Resources ³¹⁵ **Consolidated Board** of water rights complaints, charges, counter-charges, and counter-complaints.

³¹³ California Department of Water Resources, 7, above, p. 3.

³¹⁴ EWC Comment Letter, June 11, 2014, pp. 124-125.

³¹⁵ Letter of Mark Cowin, Director, California Department of Water Resources Director, US Bureau of Reclamation, to Barbara Evoy, Chief, Division of Control Board, July 23, 2014. http://accessible.biodisn.gov/data/rihts/water_issues/programs/bay_delta/complaints/docs/072314_dwr_reclam_s_and_c_deltadiversions.pdf

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

parties who use or divert water in the and subsurface of the Base Delta to SWRCB issued notices seeking additional information about water rights of the state's priority system of allocating water during drought conditions in the Sacramento Valley and the San Joaquin River Valley. The Board issued an order requiring claimants in the Central Valley watershed of the Delta to disclose and report their claims and usage plans during 2015. The Board of all the information they received from the solicitation. Using and released demand curves from which it determined water availability during 2015. On April 23 and May 1, 2015, the Board issued appropriate water rights in the Sacramento and San Joaquin River Delta, due to insufficient projected water supplies. On June 12, 2015, curtailments of diversion activity, based on updated water supply projections of Water Resources in early May, to include water right claimants and later.

The Board failed to act timely on CSPA's complaint, which alleges diversions of water by DWR and USBR at their Delta pumping and others for unauthorized and illegal diversion of San Joaquin River to the State Water Board to initiate on its own motion, an rights.³¹⁶ In responding to the Board's notice requesting information for public workshop, CSPA set forth several analytic and evidentiary tasks important for full documentation and feasibility determinations for the include measuring:

- Actual Delta outflow has opposed to the Net Delta Outflow Board. The NDOI is a calculated guesstimate and seriously drier periods has compared to the tidally filtered clow data Survey (USGS) stream clow gages at Rio Vista, Three Mile Slough. The USGS data correlates with salinity changes and while the NDOI reported average Delta outflow has 3,805 cubic May 2014, the USGS gages reported that actual Delta outflow
- Actual natural inflow has opposed to the calculated guesstimates dams the Board has historically relied upon. The Board has comprehensive "gaging" of natural clows. Natural springs in the River watersheds provide millions of acre-foot (AF) of clow in summer. DWR/USBR have no storage rights for these artesian upstream reservoirs when downstream riparian and appropriate den
- Actual accretions of water to the Delta and reaches of its including return clows, discharges and other inputs, has opposed guesstimates of accretions the Board has historically relied upon. from the Colusa Basin Drain at Knights Landing, Butte Creek/

³¹⁶ Various respondents' letters http://accessible.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/complaints/index.shtml.

³¹⁷ The Board issued its notice of public workshop on September 5, 2014, and its final order on February 14, 2015. Accessible http://waterboards.ca.gov/waterrights/board_decisions/adopted_orders/orders/2015/wro2015_0002.pdf.

³¹⁸ Accessible http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/complaints/docs/081314_cspa_evoy.pdf.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Slough and the Natomas Basin Cross Canal are unknown because. All accretions, whether from return clows, discharges from facilities, groundwater, etc. are subject to the water rights priority

- Actual channel losses in the Delta and reaches of streams to the calculated guesstimates historically relied upon by the must identify and quantify losing reaches of streams tributary effort to identify the causes. Are losing reaches of stream adjacent pumping of groundwater for local use or substitution project facilities?
- The “abandoned water” in the Delta and the legal rights system. Riparian and return clows, accretions and compliance clow considered “abandoned” clow when the Delta is in balance. Can by DWR/USBR must be in accordance with the rights of
- Commingled water from all sources that are drawn from the San Joaquin watershed, as the result of export pumping by statute and precedent, it is the responsibility of the party from one watershed to another to ensure that the water is not diminished or impaired. The Board must determine whether in taking stored Project water, whether the Projects are storing and whether the Projects are commingling of water is an adverse Delta water users from exercising their legal entitlements.

In sum, CSPA concluded, the Board must determine, among other things, have legal rights to all of the water they claim or have been accused of improperly taking actually reach the Delta; whether the commingling of water have deprived Delta water users of entitled diverters are entitled to tidal clows in a common Delta Pool claiming abandoned water that is instead subject to the priority make the necessary findings based solely on information regarding diversions requested in the Draft Order.

The issues of commingled waters in a Delta common pool and Board is also critical to the future of the Bay-Delta Estuary pool concept would provide meaningful definition of Delta common have the added benefit of supplementing establishment of the legal definition of the Estuary’s region. In the absence of decining, legal common pool as a sustainable commons, Delta exports will themselves suspicion of illegal diversions.

The RDEIR/SDEIS presents modeling results that indicate changes in be obtained for export pumping by the Tunnels Project from the shown in this comment document the expected negative water quality Tunnels diversion and redirection will cause. Source fingerprint modeling shows that Banks and Jones pumping plants will continue exporting. Unfortunately, the RDEIR/SDEIS fails to present modeling results in evaluate CSPA’s August 13, 2014, allegations concerning the Mokelumne River fractions that Tunnels Project operations may involve.

³¹⁹ RDEIR/SDEIS, Appendix B, Figures B.4-19 through B.4-22, B.4-41 through

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

These water rights issues are not addressed in the RDEIR/SDEIS and setting analyses means the impacts of the project on supplies are not adequately disclosed and analyzed.

The Tunnels Project will violate the federal Clean Water Act.

We identify several instances earlier in these comments on the Project would violate the federal Clean Water Act. We find that the Project would violate existing inadequate flow objectives, increases in concentrations of criteria pollutants water quality and violate existing bromide, selenium dissolved organic criteria. *Findings*, RDEIR/SDEIS modeling results indicate reduced survival rates under conditions of Tunnel Project operations, which demonstrates failure key beneficial uses (rare and threatened species, migratory uses, and are the most sensitive in the Bay-Delta Estuary. Degradation of further impacts to Delta drinking water quality and environmental recreational beneficial uses.

There are no designated beneficial uses or criteria set to beneficial Bay-Delta Estuary. The privileging of Delta export water quality and beneficial uses and pollutant criteria compliance parallels the Tunnels junior water rights over senior water diverters in the Delta. We promised by the Tunnels Project to south of Delta importers cor beneficial uses, environmental justice communities, and public health as Tunnels Project *the RDEIR/SDEIS fails utterly to disclose these failures*.

**The Tunnels Project is contrary to Article X, Section 2
of the California Constitution.**

The Tunnels Project would be contrary to Article X, Section California Water Code Section 100 because it violates:

- Various sections of the Delta Reform Act of 2009 identical
- State and federal clean water legislation and regulation.
- California Water Code's no injury rule and unlawful diversion
- Ecological and funding assurance requirements of the state and NCCPA.
- The Delta Protection Act of 1959 of the Delta's area of

The Tunnels Project violates the Public Trust Doctrine.

The Tunnels Project would further divert and degrade the Delta rights of environmental justice communities to continue fishing in and enclosed by BDCP facilities and restoration projects. The present estuary pool in the Delta makes it subject to *The Public Trust Doctrine of California has a fiduciary responsibility to protect such common for the people of California.*

VI. Specific Comments on the RDEIR/SDEIS

Objective, Purpose and Need Issues

We commented earlier on severe deficiencies of BDCP's purpose and transfers, Delta Plan consistency, the attempt to use real-time operation to substitute for enforceable and trackable mitigation measures, reasonable alternatives, and other matters. (See Section II comments above.)

Cumulative impacts are not adequately analyzed in the RDEIR/SDEIS.

Last year, EWC commented that the Draft EIR/EIS improperly excluded known storage projects from its list of projects considered for the Delta Conservation Plan. We provided a list of projects, programs, and the Draft EIR/EIS cumulative impact analysis. (That is, they were cumulative projects, but were excluded from modeling and narrative impacts.) No explanations were provided for their exclusion. We found justification of itself as a "stand-alone project" extended to storage recent levee studies. We concluded that the Draft EIR/EIS was decision reasonably expected cumulative projects and their cumulative impacts in the Draft EIR/EIS needed revision and recirculation.

This year, with the severing of the habitat conservation plan from arises of the relationship of California EcoRestore to baseline and under CEQA and NEPA. The RDEIR/SDEIS does not confront these

- There continues to be no single, unciied section in the R cumulative impacts adequately and clearly.
- The CEQA baseline does not contain BDCP-scaled habitat restoration therefore there needs to be a CEQA cumulative impacts analysis. EcoRestore as part of the reasonably foreseeable cumulative project
- The NEPA baseline (the No Action Alternative) is claimed by California EcoRestore projects spun off from BDCP like the Y Restoration and Fish Passage Implementation Plan, which was original NMFS salmon biological opinion. There is no quantified demonstration Action Alternative's modeling is a black box in the RDEIR/SDEIS separately identified in the RDEIR/SDEIS's Appendix 3D in which indication is given as to where in the existing conditions, cumulative impacts analysis the project was analyzed.

Such problems of presentation and analysis contribute greatly to our relies on obfuscation and confusion to create an elaborate shell of Tunnels Project. There is no attempt to clearly and succinctly show various assumptions that have gone into the RDEIR/SDEIS's changes Alternative, and cumulative impacts analysis. Discussion of baseline and assumptions are analyzed mainly in Sections 4.1 and 4.2 and no provided anywhere in Sections 1 through 5 of the RDEIR/SDEIS,

³²⁰ EWC Comments, June 11, 2014, pp. 220-225.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

extensive, revised compendium of Attachment 3D-A in Appendix 3D. is provided to guide readers through the EIRs. The EIRs are by no means adequate to provide treatment of cumulative impacts and the RDEIR/SDEIS should be made de.iciency and then recirculated.

This year, we also find that the Tunnels Project must not and the Bureau recently concluded public review and comment period Coordinated Long-Term Operations of the Central Valley Project and Earlier in 2015, the San Luis Delta Mendota Water Authority (SL Reclamation) ran a public review process on a long-term 10-year Delta water transfers.

Neither of these other review processes were referenced in the though both of them bear on the presumed need for and in practical and cumulative ways. The OCAP is integral to review because there would not be a Tunnels Project without the state which it would be integrated. And, as we have argued earlier, unacknowledged purpose of the Tunnels Project is to facilitate the that was evaluated earlier this year by SLDMWA and the Bureau transfer program are reasonable and foreseeable, and neither is an RDEIR/SDEIS. Each were reasonable and foreseeable projects in February coordinated long-term operation of the state and federal water system at least 1986 (with passage of the Coordinated Operations Act in CalFED Record of Decision was signed), and the water transfer is the first Drought Water Bank was organized to address drought of water. The RDEIR/SDEIS is inadequate in its treatment of cumulative impact analysis, and should be revised to correct this.

Army Corps Permitting

The Tunnels Project must obtain 404 permits concerning discharge of material into the navigable waters of the United States. In addition, permits under the Rivers and Harbors Act Sections 10 and 14 under or over navigable waters, and to cloud control projects are ways—in the Tunnels Project case, the Sacramento and San Joaquin levee systems and the Stockton Deep Water Ship Channel.

³²¹ US Bureau of Reclamation and California Department of Water Resource Statement/Draft Environmental Impact Report, Long Term Operation of the Central Valley and State Water Base Project, July 31, 2015 (http://www.accessible.gov/ompr/epa/nepa_projdetails.cfm?Project_ID=21883). See comments on this document by Friends of 29, 2015; AquAlliance, September 29, 2015, and by California Water Impact Sportfishing Protection Alliance, September 29, 2015; and Environmental Water <http://calsport.org/news/wp-content/uploads/Final-Draft-Comments-on-OCAP-Remand-DEIS-9.18.15.pdf>

³²² US Bureau of Reclamation and San Luis Delta Mendota Water Authority Environmental Impact Statement/Environmental Impact Report, Public Draft, released accessible http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=18361. See AquAlliance media release on its decision to litigate http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=18361 issues/lawsuit-cited-against-10-year-water-transfer-program/

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

The EWC objects strenuously to the Tunnels Project receiving a permit, as we pointed out in these comments, the project water quality certification from the State Water Resources Control Board results in the RDEIR/SDEIS that the Tunnels Project will degrade Delta pollutants, reduce fresh water flows further than they already have at central Delta, increase residence times, increase the overall share of violate existing water quality objectives and criteria for still other and endangered fish beneficial uses, as well as estuarine habitat. A result, a further violation of **Water Pollution Control Act, Article 10, Section 10, Paragraph 1, Subsection 1, Capricious—an Abuse of Agency Discretion—for the State Water Board certification for the Tunnels Project.**

But should the Board make that determination anyway, we feel the 404 permit on other environmental grounds. We note that the impacts to waters of the United States in Appendix E of the 595.3 acres of "impact acreages" facing permanent impacts, another impacted acreage to be treated as permanent (and therefore compensated) and a total of 1,931 acres of temporary impact acreage. This is reported by the Corps of Engineers' description at its website proponents' 404 permit application as 284.03 acres and 490.98 acres unclear how these two methods of accounting for permanent versus wetland and non-wetland water bodies given what is found in

The RDEIR/SDEIS fails to disclose the location nor resource description to project features.

The Clean Water Act 404 program requires that the Least Environmentally Damaging Alternative (LEDPA) be identified. The RDEIR/SDEIS fails to disclose alternatives (or any of those) from the Draft EIR/EIS last year.

The RDEIR/SDEIS, as we pointed out in these comments, jeopardizes/jeopardy to listed species, reasonable and prudent alternative statement and so is incomplete and therefore inadequate for evaluation application information and water quality certification needs.

EWC incorporates by reference in these comments and supports the of the North Delta (LAND)'s recent letter to the Corps of Engineers

- The Tunnels Project would at a minimum result in changes and associated tides in relation to levee elevations;
- Increase salinity in the north Delta;
- Impair flood management operations of local reclamation districts;
- Interfere with water and land-based recreation along Delta water Tunnels Project's alignment and surface facility element;
- Destroy cultural resources, and imperil state and federally listed species.³²³

³²³ Letter of Osha R. Meserve, representing Local Agencies of the North Regulatory Branch, US Army Corps of Engineers, Sacramento Department of the Water Resources' 2015 California Water Fix Project Science Report, 4/24/2015, p. 2.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Moreover, the LAND notes that the application was incomplete and had not been officially authorized or signed. In addition, the wetland delineations included in the application apparently mapped remotely and the figures included in the application are not authorized for entry by landowners that would be affected by the project.

According to the Delta Independent Science Board's September 30, 2015, SDEIS fails to clearly state the sequence and provide detail of the application: avoid wetland loss, because it is easier to protect existing successful new ones; if loss cannot be avoided, the project minimize its design; and finally, if loss cannot be minimized sufficiently, then the project of wetlands (the No Net Loss principle). The project have provide a full of the status of waters of the United States in relation to the project have been the "Surface Waters" sections of the RDEIR/SDEIS. They the Plan Area of the proposed Tunnels Project. Alternative description intermediate forebay, vertical shafts, control buildings, power facilities, level aspects of wetland delineation are not found in this section. The waters sections cover only state and federal water project reservoir reverse clows in relation to cloud potential and south Delta pump discussion of impacts of project construction, and dredge and cill wetlands of the project. **Appendix A of the RDEIR/SDEIS fails to provide the and his therefore inadequate. The RDEIR/SDEIS should be recirculated accurate information concerning efforts by the Tunnels Project and, if necessary, compensate for wetlands impacts.**

In addition to the 404 permit application, the Tunnels Project may affect navigable waters of the United States, neither in, nor under, nor nor Chapter 19 of Appendix A of the RDEIR/SDEIS lack sufficient sizes and uses of these waters and where and how the Tunnels Project operation would affect navigable waters. **The RDEIR/SDEIS is inadequate. It should be updated with information that is understood that conforms to law, and another draft EIR/EIS should be prepared.**

Section 4.3.2 of the RDEIR/SDEIS addresses "surface waters." Its sub-CVP-SWP reservoir cloud storage capacity, highest monthly river clows to Joaquin Rivers related to cloud potential, and reverse clows in construction activity impacts on runoff and clouding potential in this baseline or existing conditions information about cloud control facilities Delta and Tunnels Project is provided in this section, nor is information provided to Chapter 6 of the Draft EIR/EIS last year provided. The RDEIR/SDEIS in Section 4.3.2 does not state that the 404 permit, nor does it attempt to provide any analysis or description that would support the Tunnels Project application to the attempt is made to relate the change in reverse clow conditions, patterns from Tunnels Project construction or implementation of Environmental and 6-11, the potential to create or contribute polluted runoff capacity, nor expose people or structures to significant risks of construction of the Tunnels Project to specific affected levee or navigable streams or dredge/cill disposal sites in this Section.

³²⁴ Delta Independent Science Board Environmental documents for September 30, 2015, p. 6. <https://www.waterfix.org/files/2015/09/30/Recirculated-Draft-Environmental-Impact-Reports-Supplemental-Draft-EIS-for-the-Bay-Delta-Conservation-Plan-and-Tunnels-Project.pdf>

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

unconnected to the concerns of the Corps of Engineers in evaluating proposed Tunnels Project on Delta levees (levees that comprise state operated levees that make up flood protection throughout the Delta) dredge/cill disposal options for the project.

Moreover, Mitigation Measure SW-4, "Implement Measures to Reduce Runoff states that" proponents will implement measures to prevent an increase from land-side construction areas and to prevent an increase in the construction area as compared to Existing Conditions." There is the RDEIR/SDEIS as to where, when, and how such mitigations should already be in-hand for the RDEIR/SDEIS since such mitigation level review by permitting agencies (for Section 401 water quality permitting, navigable waters and federal facilities impacts review). Project to "drainage studies" to be prepared for each construction site later.

There is no connection of this mitigation to the actual construction the Draft EIR/EIS or ~~345 the RDEIR/SDEIS~~ is clear that while project needed by the Corps of Engineers to process the 404 permit, provide it in this RDEIR/SDEIS. The RDEIR/SDEIS is thus inadequate document, and inadequate for the purpose of fully disclosing project-measures at specific locations, at specific times, and under specific control capacity.

The handling of these matters strongly suggests that the Tunnels hand to have the RDEIR/SDEIS represent a project-level review for "jump-start" construction and still try to comply with Delta Reform and on the other hand, they have only program-levels of description implying that, as much as possible, as they hope to comply level of evaluation and review rather than a project-level document of detail, and hoping that such level of analysis and mitigation approach is as hasty as it seems to be wasteful.

The ambiguity between project-level and program-level review in the analysis of Mitigation Measure SW-8 addresses "wind fetch" mitigation potential damage from wind-driven waves across expanded open water locations. Once again, no project-level specifics are provided in the EIR/EIS states that "these measures will be designed based upon completed prior to construction of habitat restoration areas with increased Delta."³²⁶ This mitigation applied to last year's preferred alternative, Bay Delta Conservation Plan and its Alternative 4 configuration continues to rely on this mitigation measure as mitigation for the acknowledging the nearly entire deletion of BDCP related habitat resources more or less need for ~~what ever the case, this is another instance approach to CEQA mitigation.~~ **It should be corrected and a**

³²⁵ Draft EIR/EIS, Chapter 6, p. 6-59 to 6-60.

³²⁶ Draft EIR/EIS, Chapter 6, p. 6-63.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

These same comments apply to Sections 4.4.2, addressing Alternative 5A since the same project-level/program-level impact analysis exist there.

In addition, these sections refer at Impact SW-7 in Sections 4.3 Measure SW-7 in Alternative 1A that is supposed to be described in EIR/EIS. We referred back to Impact SW-7 and kind no such provided in the ~~the~~ **RDEIR/SDEIS and the Draft EIR/EIS are both de.i phantom load control related mitigation measure, and are therefore Project RDEIR/SDEIS must be revised, corrected, and recirculated again.**

The Section 14 review by the Corps need only focus on Tur and San Joaquin River flood control projects and the Stockton D RDEIR/SDEIS is thoroughly deficient for purposes of understanding the entire spectrum of flood control facilities in the Delta. A logical analysis of the status of flood control facilities in relation to Tunnel would have been the "Surface Waters" sections of the RDEIR/SDEIS. Appendix E of the Delta Stewardship Council's current process of Delta Levee Investment Strategy. There is no data provided in the levee mileage operation and maintenance responsibilities for state, federal levee responsibilities. There is no effort in the RDEIR/SDEIS or entities' levees would be directly affected by Tunnels Project design, activities. **These omissions render the RDEIR/SDEIS incomplete and therefore should be updated with information that is understandable by the law, and another draft EIR/EIS should be recirculated.**

Appendix E acknowledges that additional historic preservation and flood performed under National Historic Preservation Act Section 106 (including agreement execution and Native American tribal consultation) and Executive concerning floodplain modification and development. None of these sections substantive analysis and evidence of compliance with these important review requirements. What is provided is little more than a glor these things." These things must be done in public and they established public processes that must be completed in draft environment to the public prior to issuance of the Final EIR/EIS on the that no Tunnels Project facilities intersect at the surface with an facilities in the Delta, without ~~the~~ **Absence of Evidence that these processes been completed and their analysis and findings put to use measure inadequate. It should be updated with evidence that these two and another draft EIR/EIS should be recirculated.**

We reiterate that the Tunnels Project is not the Least Environmentally Damaging Alternative (LEDPA) and the Tunnels Project also fails to meet another requirement, "[t]he requirement [under CWA §404(b)(1)...that the project demonstrate that the project is the [Least Environmentally Damaging

³²⁷ RDEIR/SDEIS, Section 4.4.2, pp. 4.4.2-6 to 4.4.2-10 for Alternative 2D 4.5.2-10 for Alternative 5A.

³²⁸ Draft EIR/EIS, Chapter 6, p. 6-62.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

LEDPA.³²⁹ The proposed action is not the LEDPA simply because chooses that proposed action as its preference. The alternative Project appears most environmentally damaging alternative possible. It most definitely is and therefore, it is not the LEDPA.

The Corps in its March 2013 paper states that once DWR is "practicable alternatives, the Corps intends to make a preliminary Least Environmentally Damaging Practicable Alternative (LEDPA) under the meets its overall project purpose. Project phases and related timing authorizations will be acknowledged in the next recirculated Draft EIR/EIS. What alternatives aiming to arrive at a LEDPA? How do they relate, analysis and the need for the range of alternatives to be re- the public for participating in the review, analysis and evaluation

Finally, we recall that the Army Corps of Engineers stated in was still expected to be a habitat conservation plan, that the BDCP EIR/EIS to be a project level document for the and federal fish and wildlife agencies of take authorizations.... It will document for the actions set out in the BDCP and provide construction of a new SWP north of Delta intake facilities and intakes and existing SWP facilities, known as the Conservation Measures a proposed schedule that one year later had already slipped sub issuance of Corps issuing Section 408 (RHA Section 14) permissions CM1 phases in "late 2015 through 2018." It is now late 201 have project-level information needed by the Corps of Engineers in

We understand that the Corps, as a cooperating agency, will provide proponents so that the EIR/EIS can be used by the Corps' future permit decisions." We observe there is much work left to Tunnels Project is so fundamentally unlawful, clawed, and poorly organized monumental task to take this sow's ear and render it a silk

Supplemental Modeling for SWRCB (Increased Delta Outflows)

The 2010 Delta Flow Criteria Report³³⁰ was projected as an alternative by BDCP grounds that modeling showed that the State Water Board's widespread dead pools in and depleted deliveries from upstream res

³²⁹ EPA's Preliminary Administrative Draft Comments for the Bay Delta Conservation Plan, 26, 2012.

³³⁰ EPA, BDCP DEIS Corrections and Additional Editorial Recommendations, p. 3.

³³¹ Ibid., p. 3.

³³² US Army Corps of Engineers, "BDCP: Permit Application Approach for 2013," p. 1.

³³³ State Water Resources Control Board, *Delta Flow Criteria for the Sacramento-San Joaquin Delta Reform Act*, prepared pursuant to the Sacramento-San Joaquin Delta Reform Act Accessible online at: http://www.swrcb.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/cinal_rpt080310.pdf

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

BDCP’s EIR/EIS alternative screening criteria. The Board included DWR’s the Draft Delta Flow Criteria report in July 2010. Once out (Appendix B “Water Supply Modeling” of the draft report) were quarters, because it exceeded the charge of Water Code Section expert and public review in the informational proceedings, and had its release. In putting the water supply impact appendix forward, agenda of the Delta Flow Criteria process after the proceeding’s primary reason reservoirs would go to dead pool in their analysis simultaneously maximized Delta in-clocks, out-clocks, and south of Delta prudent carry-over for dry year or drought conditions. CVP’s point to consulting engineer and modeler Walter Bourez when interviewed in 2013 that they would not operate the reservoirs that way; they reservoir releases for meeting Delta water quality objectives, manage meeting senior water rights and making releases available for delivery approved report in August 2010 does not include DWR’s suspect

The point of the Delta flow criteria proceeding was to answer the need? ***This is his needed to determine the public trust in-stream low public trust doctrine and Water Code Section 85086(c)(2), not only water analysis should be allocated to SWP and CVP contractors. Deletion alternative removed a scientifically informed and reasonable option for another disservice to the public of this RDEIR/SDEIS.***

Reading a bit between the lines, it appears to us that inclusion was done under protest. The barely-contained hostility to this set bleed through. Grudgingly, the Tunnels Project proponents acknowledge the agency, the State Water Board’s “consideration of the proposed project the CEQA analysis and the State Water Board water right approval consideration of issues beyond that required in CEQA.”

(This passage from Section C.1 of the RDEIR/SDEIS misconstrues CEQA is to ensure that information is fully disclosed about the nature and merits in comparison to a reasonable range of alternatives, disclosure conditions into which the project would be introduced, the impacts of the project on the physical environment, and whether those impacts

³³⁴ Of the assumptions disclosed for the impact analysis in the 2010 assumes “full entitlements for CVP and SWP contractors.” This was and given the constraints placed on CVP and SWP Delta operations to keep under the law. “Full entitlements” is also an ambiguous term; it could mean entitlements regardless of water year type, or according to water year exports,” as well. These ambiguities are neither identified nor clarified in 2010. The California Water Impact Network and the California Sportfishing the State Water Board that it was application of “full entitlements” to operations in the Delta that led to the Legislature’s passage of Water of the Delta Flow Criteria Report in the first place. Letter of Carol Hoppin, Chair, State Water Resources Control Board, “Comment Letter” D 28, 2010, 2 pages. Accessible http://www.water.ca.gov/water_issues/programs/bay_delta/deltaflow/docs/comments072910/carolee_krieger.pdf

³³⁵ Appendix 3A, p. 3A-67, lines 40-48 to p. 3A-68, lines 1-14; online http://www.water.ca.gov/water_issues/programs/bay_delta/deltaflow/

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

The scope of the CEQA alternatives analysis in the RDEIR/SDEIS narrowly exhibiting only "slight differences" in design and operational the viewpoint of statewide water policies rooted in the voter-approved California's Constitution, the Public Trust Doctrine, and the 2009 Del

Appendix C continues:

This evaluation was conducted primarily to ~~without consideration of~~ **without consideration of** ~~the~~ **the** ~~benefits of~~ **benefits of** ~~the~~ **the** ~~operational scenario~~ **operational scenario** ~~likely not meet the project objectives nor the purpose of the~~ **likely not meet the project objectives nor the purpose of the** ~~evaluation was to provide a broader range of Delta outcflows and~~ **evaluation was to provide a broader range of Delta outcflows and** ~~consider during the State Water Board's anticipated water rights hearing [the state and federal projects'] authorized points of diversion necessary~~ **consider during the State Water Board's anticipated water rights hearing [the state and federal projects'] authorized points of diversion necessary** project.³³⁶

The hostility is evident in the failure to include water supply provision of these modeling results buttresses our argument in these Project proponents construe the purpose and need for their project agency, the California Department of Water Resources is failing might policies set forth by the Legislature in the Delta Reform Act,

One can sense the clenched teeth of the Tunnels Project proponents pools in reservoirs for later temperature-controlled releases benefiting and Delta in-clocks and outclocks from exports in this sentence fr

In order to provide Delta outcflow similar to what was included in in-stream cflows and ~~additional Delta outflows~~ **additional Delta outflows** and those presented for Alternative BCP Draft EIR/EIS or Alternative were ~~achieved by~~ **achieved by** ~~NSWP and~~ **NSWP and** ~~exports.~~ **exports.**³³⁷

It is ironic that it appears the RDEIR/SDEIS discloses the model this as an alternative (even if it is one that DWR and they incorporated it as a more fully-cledged alternative, it would comments on the RDEIR/SDEIS and the Draft EIR/EIS; it would and genuine alternative to the parade of only "slightly different" address in a meaningful way the restoration and cflow needs of up and down the Central Valley by state and federal water

The assumptions built into the modeling results provided in Appendix alternative that addresses many, though not all of our concerns as well as endangered species concerns.

In general, the intent behind the additional modeling ~~was to~~ **was to** ~~highlight~~ **highlight** ~~Delta outcflow scenario (beyond that modeled for Alternative 4 in the~~ **Delta outcflow scenario (beyond that modeled for Alternative 4 in the** ~~4A in this RDEIR/SDEIS) that provides both general and specific~~ **4A in this RDEIR/SDEIS) that provides both general and specific** ~~benefit to increases in outcflow during the fall (September through November),~~ **benefit to increases in outcflow during the fall (September through November),** ~~June), and summer (July and August) hydrological periods beyond those~~ **June), and summer (July and August) hydrological periods beyond those** ~~Wildlife Service and National Marine Fisheries Service in the 2008 and~~ **Wildlife Service and National Marine Fisheries Service in the 2008 and**

³³⁶ RDEIR/SDEIS, Appendix C, Section C.1, p. C-1, lines 22-29. Emphasis:

³³⁷ RDEIR/SDEIS, Appendix C, Section C.1, p. C-1, lines 29-32.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

California Department of Fish and Wildlife California Endangered Species Act Water Board's current WQCP. Increased fall Delta outflow will shift the low downstream in the Delta, likely resulting, based on current understanding favorable conditions for Delta smelt habitat in the western Delta and winter/spring Delta outflow will shift the low salinity zone further down likely resulting in more favorable conditions for longfin smelt and Delta outflow during this period could also shift pelagic fish further from migrating salmonids. Additionally, the increased winter/spring Delta outflow through the Delta, past the Suisun region, and out into the San estuarine species that have evolved under conditions of seasonally fluctuating Delta outflow during the summer over the amount specified in the Alternative habitat benefits and a quantity of flow that can be adaptively managed conditions during the previous winter and spring are likely to produce between the survival and abundance of various species and habitat conditions under active investigation by the Collaborative Adaptive Management Team, scientists investigating outflow and other issues pertinent to CVP and will also be central to the State Water Board's current water quality making processes.

Missing from this description of a positive feedback loop or "virtuous cycle" on how increased Delta through-flow would benefit migratory fish Central Valley Steelhead, green and white sturgeon, and lamprey species Sacramento, San Joaquin Rivers, the Delta. We would like to see this alternative to see what effects these alternatives would have on rates to Chipps Island. As we pointed out elsewhere in these comments could estimate what effects these increased flows could potentially have on smelt, the various runs of Chinook salmon, and water quality concerns.

Moreover, since Appendix C's intent was to evaluate water supply initially claims—then Appendix C is itself incomplete. Appendix C's illustrations impacts to monthly flows of the State Water Board's outflow and total Delta exports. Unsurprisingly, Delta outflows increase, decrease. But the sequence of Tables showing modeling results by along the various nodes of CalSIM II omits disclosure of numerical

So Appendix C is a missed opportunity. Failure to include it is a failure of both purpose and CEQA and NEPA. ***The associated RDEIR/SDEIS should be revised to include new reasonable alternatives out, low and provide cold water pool protection for upstream spawning salmonids, and should be recirculated.***

Delta out, lows are key in the San Francisco estuary receives 90 percent inflow from the Sacramento-San Joaquin River watershed, which passes reaches the lower estuary as San Francisco Bay. The San Francisco

³³⁸ RDEIR/SDEIS, Appendix C, Section C.1, p. C-2, lines 1-25. Emphasis

³³⁹ This is urgent. The National Marine Fisheries Service announced this salmon spawning activity suffered 95 percent mortality of fry eggs this "Heavy drought toll on salmon: 95 percent death rate San Francisco Bay, October 29, 2015, p. 1.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Freshwater inflows to the San Francisco Estuary have been highly altered variability of inflows have been reduced, with the result of creating "drought" conditions in the Estuary. Large scale alteration of freshwater the 1950s and 1960s when most of the large dams and water flow conditions have deteriorated further in the last decade.

Improving the alternatives analysis of the RDEIR/SDEIS must include purpose and need statement of the Tunnels Project. This means "improving conveyance" in a broader, balanced context of the coequal narrow engineering alternatives that entail slight operational differences; reverse flows in the lower Sacramento River, degrade water quality closer to extinction.

**Failure to Mitigate Adverse Impacts of North Delta Intakes in Reliance
on Adaptive Management and Fish Screens**

Key to the talking points and mitigation approach of the Tunnels river impacts of the three north Delta intakes between Courtland and Sacramento River is the placement and operation of cish screens structure that do not yet exist. Tunnels Project promotional description below) include this conceptual illustration of north Delta intake cish acknowledges risks of both low velocities and predation risk to the screens of the north Delta intakes. It is conceptual and (4 to 8 inches) and small Delta and long cish smelt (2 to screens at least 10 to 20 feet high.

However, neither conceptual, scaled illustrations nor engineered drawings screens are provided in the Draft EIR/EIS or the RDEIR/SDEIS.

The RDEIR/SDEIS describes water conveyance from the north Delta Tunnels Project "Water would be diverted from the Sacramento River intakes on the east bank of the Sacramento River to the new sub-alternatives, the RDEIR/SDEIS states: "...implementing a dual align water operations to better reflect natural seasonal flow pattern diversions in the north Delta equipped with state-of-the-art cish south Delta exports."

The BDCP Fish Facilities Technical Team has identified the high level of uncertainty as to the type and magnitude of impacts have on covered cish species that occur with the proposed screens are experimental and have never been employed anywhere large and in close proximity), type (on-bank clat plate) and tidal

³⁴⁰ the State of the San Francisco Estuary Partnership, p. 23.

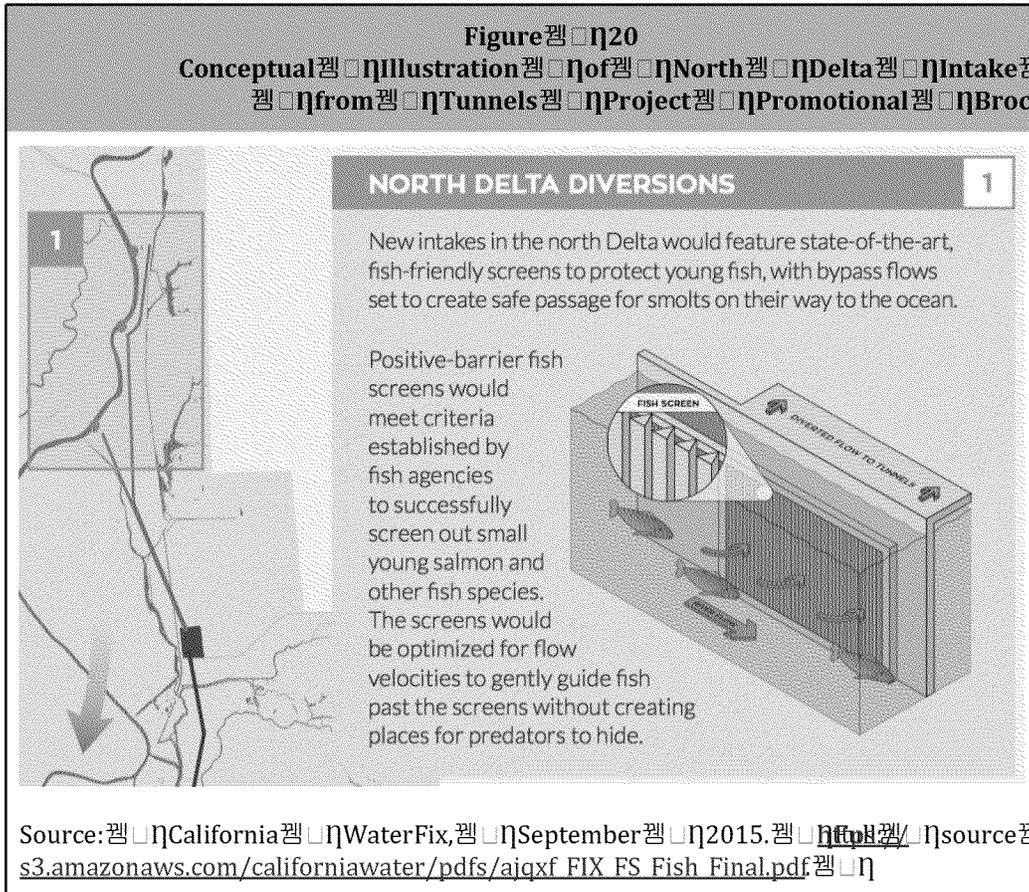
³⁴¹ RDEIR/SDEIS, Section 3, "Conveyance Facility Modifications to Alternative 4,

³⁴² RDEIR/SDEIS, Section 4.1, p. 4.1-1 to 4.1-2.

³⁴³ BDCP Fish Facilities Technical Team, Technical Memorandum, July 15, 2011, http://baydeltaconservationplan.com/Libraries/Dynamic_Document_Library/Fish_Facilities_Team_Technical_Memo_Final_7_15_2011.sclb.ashx

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

almost impossible to conform to existing³⁴⁴ screens³⁴⁵ required variance existing DFW and NMFS fish screening criteria, enormous uncertainties the technical team suggested phased construction to see if the the³⁴⁵ Part of the problem is that Delta smelt are present months of February through June, and no screens can prevent longin smelt, Sacramento splittail and smaller lamprey ammocoetes.



Fish screen descriptions indicate they would exclude cish greater than length from being scooped up by diversions, but there is no descriptions of BDCP, the Draft EIR/EIS or the RDEIR/SDEIS what that are 20 mm in size or smaller. When EWC consultant T a DWR representative at the Walnut Grove Open House in late screen at the Bureau's Red Bluff diversion to the Tehama Colusa River represented a "prototype" of what would be used at the Project. A February 2015 DWR engineering study provided three cish design features had potential for use in the Delta. The aforemen

³⁴⁴ *ibid.* pp. 22, 23.

³⁴⁵ *ibid.* pp. 35, 36.

³⁴⁶ Administrative Draft Bay Delta Conservation Plan, *Mar 2012*, *Chapter 12: Entrainment*, p. B.0-12.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

at the Glenn-Colusa Irrigation District's Hamilton City diversion and facility.³⁴⁷

The cish screens are assumed to be in place as part of Project operational criteria for each of Alternatives 4A (the preferred

The objectives of the north Delta diversion bypass slow criteria include cish screen sweeping velocities; 2) reduce upstream transport from downstream of the intakes [that is, reduce "reverse clows" in the distributaries]; 3) support salmonid and pelagic cish transport and migration habitat; 4) reduce losses to predation downstream of the diversions; and habitat conditions in the north Delta.

Both the NMFS and the California Department of Fish and Wildlife criteria for cish screens are two vectors of slow that shape the sweeping velocity. Table 7 compares these agencies' cish screen design. Project approach to cish screen design. *Conducting the Final EIR* summarizes current Tunnels Project thinking about cish screens. 9

The proposed cish screens for the north Delta intakes are intended to be they will consist of gear motors with variable speed screen bay group. The capacity of a screen-bay group is 500 groups per 3000 cfs intake. Therefore there will be six motorized cleaning system will traverse its screen bay at a rate of 0.5 or 1.4 miles per hour). Each cleaning cycle is estimated to

Debris removal and "biofouling" can create difficulties for the cish frequency depends on the debris. Daily states the intake screen functionality must be 351 per Biofouling has troubling aspects as well, and

³⁴⁷ California Department of *Environmental Quality* RESOLUTION to Further Reduce Diversion of Juvenile Salmonids to the Interior and Southern Delta and Reduce Exposure Draft Phase II - Recommended Solutions Report, prepared in response to Service 2009 Biological Opinion and Conference Opinion on the Long-Term Project and State Water Project, Reasonable and Prudent Alternative IV.1.3, Hereafter, *EWRC Recommended Solutions*.

³⁴⁸ RDEIR/SDEIS, Section 4.1, p. 4.1-11.

³⁴⁹ CDFW's cish screening criteria are found at http://www.cdfw.ca.gov/Engin/Engin_ScreenCriteria.asp. The states' cish screening policy is found at [http://www.westcoast.ciseries.noaa.gov/publications/hydropower/southwest region 1997 cish screen design criteria.pdf](http://www.westcoast.ciseries.noaa.gov/publications/hydropower/southwest%20region%201997%20cish%20screen%20design%20criteria.pdf)

³⁵⁰ California Department of Water Resources, Report: Dual Conveyance Facility Modified Pipeline/Tunnel Option - Clifton Court Forebay, 2014, Table 6-2, through 6-6.

³⁵¹ *ibid.*, p. 6-17.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

Table 7 Comparison of Fish Screen Design Criteria			
In-stream	CDFW	NMFS	BDCP/Tunnels Project
Approach velocity (the water velocity vector component perpendicular to screen face)	For self-cleaning screens, 0.33 feet per second, where the exposure to the screen shall not exceed 15 minutes; for "screens which self-cleaning, the river/stream approach velocity, will be about 0.0825 feet per second. "The screen shall be cleaned the approach velocity exceeds the approach velocity" of 0.33 feet per second.	Shall not exceed 0.8 feet per second for all locations cingerling criteria.	0.33 feet per second salmonid fry, the presence of smelt when approach velocity shall be per second. One cleaning per screen open 0.5 to 2 feet with a cycle approximately 5 minutes (maximum cleaners per clean system at each
Sweeping velocity water velocity component parallel adjacent to the face)	At least two allowable approach velocity in rivers.	Sweeping velocity be greater than approach velocity.	Greater than the approach velocity under NMFS criteria and "at least the CDFW (200 criteria."
Other	Screen face shall be parallel to the adjacent bankline. No explicit criteria for small fish like smelt.	Screen face shall generally be parallel to the adjacent bankline."	"Unused sections screens will be covered to protect operational flexibility as necessary."
Sources: Footnote below for NMFS and CDFW cish screen November 2013, Chapter 5, Effects <i>Engineering Report: Dual Conveyance Pipeline/Tunnel Option—Clifton Court Forebay</i> , Appendix 15, Table 15.1			

Biofouling, the accumulation of algae, freshwater sponge, Asian clams, mussel organisms, can occlude the screens and jeopardize function. A key design that all mechanical elements can be moved to the top surface for intake facilities have top-side gantry crane systems for removal and baffles assemblies, and bulkheads.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

All panels will require removal for pressure washing. Additionally, screen dewatering for inspection and assessment of biofoul growth rates.

With the invasion of Quagga and Zebra mussels into inland waters, Coatings and other deterrents will be more thoroughly investigated during design.³⁵²

The EIR anticipates that a

log boom system will be aligned within the river alongside the intake and their cleaning systems from damage by large floating debris. Spare the intake structure should be available to minimize downtime should majority of working components being submerged and with security provisions damage is not expected³⁵³ to be significant.

No estimate is provided for when the boom and how long individual from the river for cleaning. Such maintenance would force temporary portion of the screened intake. This could cause either loss of continued, or interrupt diversions while screen was cleaned. In either on risks to cish or to water non-diversions. RDEIR/SDEIS propose any assurance or mitigation measure to avoid impacts to cish during at each north Delta intake. Promotional materials for the Tunnels problems with the cish screens.

None of this information is incorporated into the RDEIR/SDEIS's alternatives. Alternative descriptions for the north Delta intakes are the RDEIR/SDEIS should be revised, improved, corrected, and recirculated.

These critical omissions from alternative descriptions do not prevent from claiming and applying alleged benefits of such cish screens mitigations to listed cish species and non-covered cish species that the north Delta intakes and their screened entrances. The alleged Tunnels Project's approach to adaptive management:

Specifically, collaborative science and adaptive management will, as appropriate, information and insight gained during the course of project construction improve...the design of cish facilities including the intake cish screens.

As forward-looking as this passage tries to be, it reflects an mitigation on behalf of cish protection in the design of intake proponents want to build the intakes with screens, and then implement adaptive management. "As appropriate" is a notoriously meaningless phrase establishing a definite course of action; it means "whatever we

³⁵² Ibid, p. 6-17.

³⁵³ Ibid, p. 6-18.

³⁵⁴ RDEIR/SDEIS, Section 4.1.3.1, Science and Adaptive Management, p. 19, lines 28-31; see also Section 4.1.3.1, p. 4.1-29 for Alternative 2D and Section

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

The collaborative science process will also inform the design and construction of new intakes. This requires active study to maximize water supply, ensure operation, and minimize effects to covered species.

The collaborative science process of course assumes the intakes and screens are built first, then subjected to study. It is not a cish screens to go forward without demonstrating that the impact is mitigated. It employs adaptive management in the service of building structures in the presence of listed cish species and asking California Tunnels Project proponents that they will solve the problems routinized screen cleaning and maintenance while ignoring consideration of the Delta Reform Act's coequal goals and reduced Delta the state's reasonable use and public trust doctrines.

But even more—what is this "Collaborative Science and Adaptive Management RDEIR/SDEIS" says only that

it is assumed that the [AMMP] developed for Alternative 4A would have any new significant environmental effects; instead the AMMP would include maintenance of facilities and protected or restore habitat associated with

The RDEIR/SDEIS fails to disclose whether the AMMP replaces BDCP clarify that this is the Tunnels Project's analog to last year's management program, research agenda, and governance processes. This is to maintain a modicum of adaptive management—as-wild-card, while Section 10 habitat conservation plan approach.

This "wild card" application of the cish screens is applied through of impacts to Delta smelt, longfin smelt, winter-run Chinook salmon and Central Valley steelhead. The "wild card" cish screens are for and non-native species as well that would be vulnerable to immediate death from the north Delta intakes. For winter-run Chinook salmon

State-of-the-art [footnote] cish screens operated with an adaptive management eliminate entrainment and impingement risk for juvenile winter-run Chinook

[Footnote] The cish screens would be state-of-the-art by incorporating operating to cishery agency standards. The features of the screens described in more detail in Section 3.6.1.1 of Chapter 3, Description

The footnote to this passage does not say whether that Section of the 2013 Bay Delta Conservation Plan or the 2013 Draft EIR/EIS Draft EIR/EIS last year. This oversight should be corrected. The SDEIS means it is permissible and appropriate to verify and compare have available to us in 2015. There, the Draft EIR/EIS acknowledges

³⁵⁵ RDEIR/SDEIS, p. 4.1-20, lines 4-6.

³⁵⁶ RDEIR/SDEIS, Section 4.1.2.4, p. 4.1-18, lines 20-24; and repeated in and Section 4.1.4.3, pp. 4.1-36.

³⁵⁷ RDEIR/SDEIS, Section 4.3.7, p. 4.3.7-48, lines 13-15.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

For the purposes of this EIR/EIS, that the Qish screens would be criteria, which requires 5 square feet per cfs of submergence per second sizes, like the individual intake sizes, would vary depending on intake to 22 feet in height and from 13 to 5.5 ft. ³⁵⁹ That the screening system would include several traveling brush cleaning systems installed intake. An alternative to the fixed screen panel and brushing system screen belt and stationary brush/water jet system could be used.

This Draft EIR/EIS passage also juxtaposes Delta smelt criteria with screens. We note that last year's passage assuming Delta smelt authority or documentation for such criteria. These criteria involve a is two and a half (2.5) times faster than the cleaning rate and 15 to 25 times faster than the approach velocity criteria summarized in Table 7. (0.2 fps to 0.33 fps). The Tunnels P stories straight on cish screen design criteria performance and whether than the approach and sweeping velocities really works to prevent vicinity. Could the cleaning system itself cause impingement, injury alternative pathway to cish demise beyond the passive screen/approach another way, would self-cleaning operations occur while the intakes have to be shut down to allow cleaning to proceed and avoid engineers and biologists considering this possibility?

These passages indicate, despite their technological and scientific optimism continue to be unproven, experimental, and very much a work in progress (sent non the date the RDEIR/SDEIS was released) that engineering details are very much still in the planning and design stage, screens. ³⁵⁹ As with any scientific effort, outcomes of properly designed never known in advance. The RDEIR/SDEIS's brand of optimism is boosterish at worst.

The RDEIR/SDEIS also concludes that "Potential entrainment and impinge proposed north Delta facilities would be limited because it is you smelt... The intakes would be screened and would exclude delta smelt larger." ³⁶⁰ This conclusion is speculative. As with last year's Draft disclose results estimating entrainment and impingement risks for Delta intakes to buttress this claim. Table 11-4A-1 presents modeling entrainment... of Delta Smelt at SWP/CVP South Delta Facilities for Al table is presented for entrainment risk at north Delta intakes.

³⁵⁸ Draft EIR/EIS, November 2013, p. 3-87, lines 16-22. Emphasis added

³⁵⁹ Email from Cassandra Enos of DWR to Dawn Bertolani, HGCPM, et al. Details Meeting," July 10, 2015. Enos writes: "I think the consensus was another meeting in a couple of weeks to discuss the intake construction she had left from a previous meeting: "What size are the baffles of the refuge? How will the sweeping velocity past the screens be measured?"

³⁶⁰ RDEIR/SDEIS, p. 4.3.7-24, lines 4-7.

³⁶¹ This is also true of Alternatives 2D and 5A. See RDEIR/SDEIS, Section 4.5.7, Table 11-5A-1, p. 4.5.7-4.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

These comments help document concerns expressed by the Delta Independent (DISB). In its comments to the Delta Stewardship Council about

It is unclear how (and how well) the cish screens would work. That cish >20 mm are excluded, but what about cish and larvae cish screens appear to have been installed, but data on their effect specific data on how well screens function, the conclusion that there are certain (e.g., page 1-100 line 38).

Here, as in many other places, measures are assumed to function as the assumptions. The level of certainty seems optimistic, and it is contingency plans in case things don't work out as planned. This Draft.³⁶²

Assuming Delta smelt, friendly design parameters does not mean the or have been incorporated into a specific design that would have been not disclosed as part of an alternative descriptions in the DREIS. This passage does not explain where the Delta smelt is consistent with NMFS or CDFW criteria shown in Table 7 above north Delta intake is screen designs are in error relative to bypass low operational criteria may not be correct. The Tunnels clarify and correct where necessary the is screen criteria and

In sum, there are distinct disadvantages associated with even the technology applied along the Sacramento River. Fish screens "do affect recent DWR engineering report drafted for compliance with the NMFS

A large amount of system structure would be placed into the water regional hydraulic patterns. Another disadvantage... is the potential for debris obstruct or damage parts of the screen, which potentially could lead system. Therefore, CDFW and NMFS screening criteria may not always require constant monitoring and maintenance to assure that the system

The study adds:

- Boat navigation may also be affected. Some type of boat accommodation recreational boat passage.
- In waterways where there are dynamic hydraulics such as are potential for cish impingement.

³⁶² Delta Independent Science Board Environmental documents for Sacramento Water Fix 30, 2015, p. 17.

³⁶³ DWR Engineering Solutions 2-31 to 2-32.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

DWR's study rejected cish screens technology for natural diversion situations Sacramento River splits off at neither Georgian River on the fact that .ish screens options were considered at sites just a few miles intakes, why were ish screens rejected for natural diversions from while they are deemed acceptable nor even necessary for the tunnels Project?

**Absence of Baseline Information to Measure
Predation Significance of North Delta Intakes**

The RDEIR/SDEIS's conclusions on the effects of the north Delta speculative: "Predation loss at the north Delta intakes may occur delta smelt are anticipated to occur that far upstream." This con results concerning upstream migration of X2 (the estuarine habitat in component of Delta smelt habitat index measurement) due to Tunnel in these comments above and in EWA's 2012 report at least upstream, habitat grows smaller and migrates eastward, and the Delta smelt's habitat grows smaller and migrates eastward (upstream) as well. By with cish screens were completed and begin operation, and under and Delta smelt could frequent this reach more than anticipated that long.

Also related to the proposed introduction of north Delta intakes the matter of predation of listed species. Last year's BDCP states predation this way:

The likelihood of a predation event is a function of three factors: prey; a decision by the predator to attack the prey; and capture. Encounter frequencies between predators and covered cish are related to spatially and temporally, the vulnerability of prey, which is typically like river clows and turbidity..., and their abundance relative to alterna

"Predation hotspots" were mapped in last year's BDCP Delta roots and decline what a predation hotspot is, but they appear to have if not all, are associated with artificial (human-built) in-channel rock barriers, failed levees, submerged bridge abutments, and Jones include artificial open water areas like Clifton Court Forebay and

³⁶⁴ *ibid.* p. 3. The use of cish screens as a deterrence option was evaluate Typically, maximum cish diversions are used to size cish screens and requirements. Given the range of high maximum clows over the Delta screens would be unreasonably large to meet these requirements. Average resulted in screen sizes that were still large and exceptionally long. These at its January 28, 2014 meeting (see Appendix A). The TWG decided consideration based on the required large structure sizes and concerns over NMFS screening criteria." p. 11

³⁶⁵ EWC Comments, June 11, 2014, p. 65 and Figure 7.

³⁶⁶ BDCP, November 2013, p. 3.4-299, lines 4-9.

³⁶⁷ BDCP, November 2013, Figure 3.4-32, "Predation Hotspots in the Plan"

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

refuges for prey cish, and prey visibility is high due to relative also learned to wait patiently for deliveries of salvaged cish from regular locations along the lower Sacramento River. "Total consumption predator number, predator size, water temperature, prey density, and (i.e., microhabitat use of predator and prey and whether the prey Currently known predation hotspots are listed salvage barriers scribes areas where microhabitat use coincides with predator frequency.

Last year's Draft EIR/EIS acknowledges that both the north Delta nonphysical barriers are expected to create new predation

The baseline of predation in the lower Sacramento River between each of the listed cish species is unknown and not disclosed alternatives. Predation losses for winter-run Chinook salmon at the acknowledged by the RDEIR/SDEIS:

Potential predation effects at the north Delta intakes for juvenile salmon River (as opposed to entering the Yolo Bypass) could occur if predation as has been observed at other long screens in the Central Valley uncertain, however.

This section's lengthy description of a "bioenergetics model" to estimate the Sacramento River exemplicies the Tunnels Project Proponents' willing serves Tunnels Project. **The big take remains that the RDEIR/SDEIS still a baseline of comparison for the predation in the river reach on the Sacramento River needed to arrive at a reasonable CE significance of predation effects. The RDEIR/SDEIS has neither adequate persuasively demonstrated its claim that listed cish would not be**

No lawful mitigation plan for predation hotspot mitigation nor avoid descriptions of the RDEIR/SDEIS's alternative descriptions. Therefore, the impact conclusions concerning predation loss for Delta smelt and speculative and therefore inadequate. The RDEIR/SDEIS should be revised baseline information on predation in this reach of the river. A SDEIS for additional public review.

The RDEIR/SDEIS is incomplete for lack of other critical baseline data.

Last year, EWC commented that the Draft EIR/EIS and BDCP do DWR has been unable to collect necessary environmental, cultural and field data from Delta lands along the Tunnels Project alignment

³⁶⁸ BDCP, November 2013, p. 3.4-299, lines 12-14.

³⁶⁹ BDCP, November 2013, p. 3.4-299, lines 15-39, and p. 3.4-300,

³⁷⁰ BDCP, November 2013, p. 3.4-300, line 12.

³⁷¹ See RDEIR/SDEIS, footnote 5, p. 4.3.7-66, indicating methodological problem study at the GCID cish screen in the Sacramento River near Hamilton Delta-located intakes has been expected since at least the CalFED Record studies were conducted in anticipation apparently.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

and Conservation Measure 1.1.1. Last year, we also noted that the disclosure adequately the cultural resource setting of the Delta Plan Sacramento's comments on the incomplete discussion of Chapter 18's was inadequate for omitting special planning and neighborhood preservation zoning code.

This year, we note that the RDEIR/SDEIS fails to incorporate Sa of its RDEIR/SDEIS. This year, the habitat restoration activities are now preferred alternative and the other two sub-alternatives addressed in we kind, however, that the same broad ***Theus Inhibitory of the California Department of Water Resources to gain access to the Delta the Tunnels Project means that data necessary for cultural and geotechnical matters is unavailable to adequately describe the Tunnel environmental baseline.***

The lack of available data is acknowledged in the RDEIR/SDEIS.

Although the majority of the footprint of the water conveyance facility resources have been located with and near the portions of the alignment this reason, additional archaeological resources are likely to be found in where surveys have not³⁷⁴ been conducted.

The RDEIR/SDEIS further acknowledges that there remain "unidentified architectural and built environment resources that could be affected associated with the Tunnels Project.

As described in detail in ~~the RDEIR/SDEIS~~ ***Although the WR does not have legal access to the footprint for the water conveyance, historical documentation suggests occur in the footprint of the water conveyance facilities that have currently be accessed and evaluated. Construction may result in direct damage through vibration, or indirect effects such as changes to the***

Impact CUL-6 is not so much an impact discussion, but an incomplete. An adequate and complete CEQA/NEPA document is required full due diligence by the document preparers, and acknowledging its resolve the RDEIR/SDEIS's defects in this area, nor does Mitigation survey of inaccessible properties to assess eligibility, and determine if the impacted by the Project and Develop treatment to resolve or mitigation for the incom ***these items are the research agenda and methodology the next recirculated draft CEQA/NEPA document, not adequate treatment under CEQA and NEPA. They are a speculative to do list, not***

In the area of geotechnical and soils matters, the Draft EIR/EIS evaluate the Tunnels Project's vulnerability to earthquake and ground-

³⁷² EWC Comments, June 11, 2014, pp. 133-135.

³⁷³ RDEIR/SDEIS, Sections 4.3.14, 4.4.14, and 4.5.14.

³⁷⁴ RDEIR/SDEIS, Section 4.3.14, Impact CUL-2, p. 4.3.14-2, lines 15-19.

³⁷⁵ RDEIR/SDEIS, Section 4.3.14, Impact CUL-6, p. 4.3.14-5, lines 25-30. Section 4.4.14, pp. 4.4.14-5 to 4.4.14-6; and Section 4.5.14, pp. 4.5.14-5

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

groundwater from construction activities, ground settlement, potential slope fault rupture, liquefaction, and canal seepage. Each impact and mitigation "could," rather than "would" or "will." This is because neither do geotechnical issues is based on data from actual conditions along acknowledged implicitly when the RDEIR/SDEIS states:

NEPA Effects: This potential for a substantial because settlement or collapse could cause injury of workers at the construction sites as a result of

The hazard of settlement and subsequent collapses of intake canyons assessing specific geotechnical and hydrological conditions at intake locations, wells, pipelines cross waterways and major irrigation canals. A California-registered certified engineering geologist has recommended measures in a geotechnical report to hazards, such as seepage cutoff walls and barriers, shoring, grouting of strengthening of nearby structures, existing utilities, or buried structures.

Again, such prospective statements are due to the fact that DWR lands along the alignment of the Tunnels Project or any of the drilling, boring, and petrologic and soils analyses needed to the Project on geological and ~~the~~ **resources counterpart above, his not a valid NEPA conclusion, but methodology description for recirculating the next Draft EIR/EIS. It represent the extent, location or magnitude of project impacts. The the RDEIR/SDEIS's treatment of geology/seismicity issues, and his inadequate disclosure purposes of CEQA and NEPA.**

DWR's difficulties obtaining entry in December of 2013, after five oral argument in the consolidated appeals in the Delta "access of Appeal for the Third Appellate District in Sacramento. This battle spawned by the State's multi-billion dollar twin-tunnel project Bay Delta Conservation Plan. Counsel for the State urged the court prevented the Department of Water Resources from gaining access to investigations they insisted were essential to complete planning for landowners sought to affirm and strengthen the favorable rulings that ambitious plans.

The argument before the Court of Appeal focused on whether D access rights by proceeding under the "pre-condemnation entry" statute et seq.). The entries DWR requested were prolonged and invasive. condemnation entry statute allows it to obtain those entry rights many rights and safeguards DWR would be required to give the time-consuming procedure known as "eminent domain."

The landowners, on the other hand, argued that the requested "intrusive that they amounted to easements that could be lawfully

³⁷⁶ RDEIR/SDEIS, Section 4.3.5, p. 4.3.5-2, lines 16-22. Similar narrative 4.5.5 as well.

³⁷⁷ EWC is grateful to member group Restore the Delta and Thomas California, for this summary description of temporary and permanent entry Department of Water Resources and Delta landowners.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

They contended that DWR's entry requests were not brief and in the pre-condemnation entry statute. By attempting to obtain these abbreviated pre-condemnation entry procedure, DWR tried to do an end-run around domain laws and, in fact, sought an unconstitutional taking of private property.

In March, 2014 the Court of Appeal issued its Decision. The landowners, holding that DWR could not proceed with a "geotechnical" pre-condemnation entry statute because that would effectuate an unconstitutional point, the appellate court affirmed the Superior Court's ruling. The court ruled in favor of Delta landowners with respect to DWR's requested "environmental" takings, they, too, amounted to unconstitutional takings. On this issue, the court's ruling.

DWR petitioned the California Supreme Court for review of that ruling. The court granted the petition. The merits of the case are now complete, and we expect sometime in 2016. We think that well-established case law, principles of judicial and public policy favor the Delta landowners.

However, regardless of the outcome in the Supreme Court, Delta landowners successfully blocked DWR's effort to invoke a procedural "shortcut" to conduct invasive "surveys" in the Delta to advance the pernicious twin tunnels project.

DWR's Eminent Domain Attempts Failed DWR's effort to access Delta landowners' property under the pre-condemnation entry statute, in mid-2011—even as the Ninth Circuit Judge's rulings were being perfected—DWR commenced eminent domain proceedings in order to condemn temporary easements to access its drilling operations. DWR also tried to condemn permanent easements by 4 feet, for each boring it intended to drill.

However, DWR made several serious missteps in its zeal to obtain easements. It insisted it needed for BDCP-related geotechnical research. The landowners' counsel successfully resisted DWR's eminent domain efforts. Since dismissed its eminent domain actions in San Joaquin, Yolo, and Colusa Counties.

The gaps in setting/baseline, impact, and mitigation information trend in the RDEIR/SDEIS of these issues is incomplete. As a consequence, the RDEIR/SDEIS should be revised, updated with site-specific data on these issues for public review.

Clifton Court Pump Failure, Water Hammer and Back-flow Effects

The RDEIR/SDEIS states that a key modification to Alternative 4 removal of three north Delta intake pumps to be replaced with pumps from the southern end of the Tunnels. This modification is assumed for modified Alternative 4 and the new preferred Alternative 4.

³⁷⁸ RDEIR/SDEIS, Section 3.1, pp. 3-1 to 3-2. "...after extensive engineering it is not necessary to build pumping plants adjacent to each intake tunnels. Instead, water could be moved from the river into tunnels by 1.5 miles away on DWR property at the southern end of the tunnels."

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

This new conceptual design has a potential hazard issue that is the RDEIR/SOP **Power failure at Clifton Court Pumping System coinciding Project diversion rates are acknowledged to be capable of causing would send water rushing back up through the tunnels and screens and vent shafts, the intermediate forebay, and potentially out through screens between Hood and Courtland.**

According to an **Appendix C** **Power** **Failure** **Scenario** **the** **failure** **to** **the** **south** **Delta** **Tunnels** **Project** **could** **cause** **an** **"adverse** **hydraulic** **transient** **condition** **"sudden** **change** **resulting** **from** **rapid** **closure** **of** **a** **valve** **or** **CER** **states** **that** **"for** **the** **vast** **majority** **of** **these** **transients** **[sic],** **specific** **control** **facilities** **are** **not** **necessary** **for** **protection.** **However,** **transients** **can** **result** **in** **damage** **to** **the** **conveyance** **system** **and/or** **evaluates** **"one** **of** **the** **more** **critical** **conditions...associated** **with** **a** **total** **delivery** **rates."**

The "critical condition" of this "water hammer" event is described

...when the pumps at the Clifton Court Pump Station (CCPS) suddenly for overclow in a closed system, the water within the CCPS shaft of the higher pressure developed at the face of the pump impeller of water is brought to rest, the same action is applied to the also to rest. In this manner, a pulse wave of high pressure travels speed...and at a sufficient pressure to bring the fluid to rest. With expands slightly and the kinetic energy is converted to elastic energy

When this pressure wave reaches the [intermediate forebay, IF] the bottom tunnel is under the extra head required to stop the flow. At the as the pressure is suddenly released to the IF. With the lost stored energy and reversing the flow. This reflection process is repeated imperfect elasticity of fluid, and the tunnel wall dampens out the fluid to rest at the constant river elevation.

While the above represents a theoretical condition, in actuality (i.e., pressure) wave traveling upstream does not bring the fluid to rest at the surge shaft weirs and as a result, the magnitude of the

It is unclear from this description how violent or potentially dangerous such an event would be. The conducts multiple modeling analyses to sensitivity and realism of the analysis and significance of the flow and potential clouding. The appendix finds that the surge conceptual Tunnels Project design do help reduce the impact, but underground allow some forward moving flow to continue] results in Forebay] it will be less than the delivery demand from the typical head build-up that would otherwise be required to stop

³⁷⁹ California Department of Water Resources, *Dual Conveyance Facility Modification Pipeline/Tunnel Option—Clifton Court Forebay Pumping Station*, Appendix D, Surge Analysis Technical Manual, December 3, 2014, COM Appendix C.

³⁸⁰ AECOM Appendix D, pp.1-2.

**Environmental Water Caucus Comments on
Recirculated Draft EIR/Supplemental Draft EIS
for Bay Delta Conservation Plan and Tunnels Project**

weirs act as a large shock absorber in the system. It takes effect of the rapid back-crow in the Tunnels Project and the that the IF level rises slightly above the river elevation for 10-20 minutes). This results in a small reverse flow to the located close to Hood and Courtland.

The Appendix further found that:

The characteristic response observed does suggest that reverse flows into possibility during conditions when a head imbalance occurs. A head imbalance level at the surge shaft weirs (EL 14.6) is equal to or higher

During conditions where the Sacramento River water elevations are much no, reverse flow will occur. However, in conditions where the Sacramento are lower than EL 14.6 measurable reverse flow will occur. This occurs at the CCPS, the water level quickly rises to an elevation compression wave returns, a head imbalance has developed and clows towards the Sacramento River. While this condition does not pose a it does potentially create backflow through the intake screens into below EL 14.6 unless checking gates or other control measures are

The Appendix estimates backflows at the intakes as being quite cfs with the current intermediate forebay design used in the mo charts head elevations of Tunnels backflow showing the magnitude waves and the backflows anticipated in the modeling. But the C describe potential impacts of surge and vent shaft impacts from extent to which they would reach the surface, neither in water

This water hammer/backflow problem—an apparent consequence of modify alternative” by relocating pumps from the north Delta intakes to unmentioned as a possible hazard in the hazard and hazardous Sections 4.3, 4.4, and 4.5 of the RDEIR/SDEIS. No attempt is varying combinations of circumstances that could cause blackouts that would cause such hazardous events. What is the design stre sufficient to avoid failure of tunnel walls in such events? What damage from water hammer and backflow to tunnel walls, the shafts, and intakes?

While the effects of such an event are acknowledged in the evaluated in the RDEIR/SDEIS. An independent expert panel should this problem. This is yet another example of the deficiencies inadequate, should be revised and recirculated.

³⁸¹ AECOM Appendix D, p. 13.

³⁸² AECOM Appendix D, p. 13.